

Chapter CXLIII.

QUESTIONS OF ORDER AND APPEALS.

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6863. The Speaker decides questions of order.—Section 4 of Rule I⁶ provides that the Speaker “shall decide all questions of order.”⁷

6864. A question of order arising out of any other question must be decided before that question.—Jefferson’s Manual, in Section XXXIII, provides:

But there are several questions which, being incidental to every one, will take place of every one, privileged or not, to wit, a question of order arising out of any other question must be decided before that question. (2 Hats., 88.)

¹ Speaker may reexamine and revise his opinions. (Sec. 4637 of Vol. IV.)

As to the time of making a decision. (Sec. 2725 of Vol. III.)

Clerk’s decisions at the organization of the House. (Secs. 68–72 of Vol. I.)

² All points of order should be stated before a decision as to any. (Sec. 3716 of Vol. IV.)

In relation to the question of consideration. (Secs. 4950–4952 of this volume.)

In relation to conference reports. (Sec. 6424 of this volume.)

³ See also sections 4783, 4784 of Volume IV and 6987 of this volume.

⁴ In an impeachment trial. (Secs. 2088, 2100, 2177 of Vol. III.)

⁵ Appeals in order during a call of the House to secure a quorum. (Secs. 3036, 3037 of Vol. IV.)

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Points of order in impeachment trials. (Sec. 2100 of Vol. III.)

⁶ For full form and history of this rule see section 1313 of Vol. II of this work.

⁷ When a Speaker pro tempore occupies the chair he decides questions of order; and when the House is in Committee of the Whole the Chairman decides.

6865. The Speaker may require that a question of order be presented in writing.—On January 26, 1842,¹ during proceedings on a proposition to censure Mr. John Quincy Adams, of Massachusetts, for presenting a petition of certain citizens of Massachusetts who prayed for the dissolution of the Union, Mr. Adams rose to a question of order.

The Speaker² informed Mr. Adams that thereafter the Chair would entertain no point of order that was not reduced to writing, it being the privilege of the Chair to have the point of order reduced to writing.

6866. It is the better practice for all points of order to be stated before a decision is made as to any.—On March 22, 1904,³ during consideration of the Post-Office appropriation bill in Committee of the Whole House on the state of the Union, Mr. Thomas S. Butler, of Pennsylvania, proposed an amendment, against which Mr. Jesse Overstreet, of Indiana, raised a point of order.

Mr. James R. Mann, of Illinois, and John S. Snook, of Ohio, having risen to parliamentary inquiries concerning additional points of order, the Chairman⁴ said:

The Chair will state that he considers the better practice for all points of order to be made at one time. The Chair thinks that if one makes the point of order against an amendment which should be overruled that other gentlemen have the right to raise points of order against the pending amendment. * * * The Chair stated that the gentleman making the point of order should, according to the best usage, include all the reasons for making his point of order, but that other gentlemen could make other points of order if the Chair overruled the point first made.

6867. The reservation of a point of order must be made publicly, and not by private arrangement with the Member in charge of the bill.—On April 21, 1906,⁵ the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the Clerk read:

Water meters: For the purchase, installation, and maintenance of water meters to be placed in such private residences as may be directed by the Commissioners of the District of Columbia; said meters at all times to remain the property of the District of Columbia; to be repaid from revenues of the water department at the rate of \$20,000 per annum, beginning with the fiscal year to end June 30, 1908, \$100,000.

After debate had proceeded for some time Mr. Thetus W. Sims, of Tennessee, proposed to make a point of order, stating that he had had an agreement with the Member in charge of the bill that he might do so at any time after the debate had proceeded.

Mr. Frederick H. Gillett, of Massachusetts, in charge of the bill, said:

I must say this, and I trust no Member of the House will interfere with the agreement I made with the gentleman, that I made an agreement with the gentleman from Tennessee that when this came up he should ask a question, and that if later he wished to raise the point of order, even after discussion, I would not then raise the point that it was too late. Therefore I trust that no other Member will do it now.

¹ Second session Twenty-seventh Congress, Globe, p. 176.

² John White, of Kentucky, Speaker.

³ Second session Fifty-eighth Congress, Record, pp. 3524, 3526.

⁴ Henry S. Boutell, of Illinois, Chairman.

⁵ First session Fifty-ninth Congress, Record, p. 5669.

Objection being made, the Chairman¹ said:

The Chair will state that the House can not be bound by an agreement of gentlemen.

6868. When a point of order is reserved the pending proposition may be debated on its merits unless some Member demands a decision of the question of order.—On February 19, 1907,² the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Robert B. Macon, of Arkansas, proposed to reserve a question of order.

Mr. James R. Mann, of Illinois, insisted that an immediate decision of the point of order be made, and a question arising, the Chairman³ held:

When a point of order is reserved the merits of the proposition may be discussed until some member of the committee calls for a ruling, and then the Chair will rule. The gentleman from Illinois now calls for a ruling, insists upon the point of order, and the Chair sustains the point of order, and the Clerk will read.

6869. A point of order may not be reserved by a Member if another Member insists on an immediate decision.—On April 26, 1900,⁴ the Post-Office appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Oscar W. Underwood, of Alabama, reserved a point of order on a paragraph relating to necessary and special mail facilities on trunk lines of railroad.

Mr. William P. Hepburn, of Iowa, objected, demanding that the point of order be decided at once.

The Chairman¹ said:

The Chair think the gentleman can not reserve the point of order in the face of an objection on the part of any member of the committee. If the gentleman from Alabama [Mr. Underwood] desires to insist on his point of order and the gentleman from Iowa [Mr. Hepburn] insists that it shall not be reserved, it must be disposed of now.

6870. On January 24, 1901,⁵ during consideration of the naval appropriation bill (H. R. 13705) in Committee of the Whole House on the state of the Union, Mr. James D. Richardson, of Tennessee, reserved a point of order on a paragraph relating to the classification of naval vessels.

After debate Mr. Richardson withdrew the point of order.

Whereupon Mr. John F. Fitzgerald, of Massachusetts, renewed the point of order, desiring to reserve it pending debate.

There being a demand for the regular order, the Chair ruled.

Mr. Fitzgerald rising to a parliamentary inquiry as to his rights in reserving a point of order, the Chairman⁶ said:

The gentleman from Massachusetts, as the Chair understood, renewed the point of order which the gentleman from Tennessee abandoned. * * * The gentleman from Massachusetts subsequently

¹ John Dalzell, of Pennsylvania, Chairman.

² Second session Fifty-ninth Congress, Record, p. 3373.

³ Frank D. Currier, of New Hampshire, Chairman.

⁴ First session Fifty-sixth Congress, Record, p. 4717.

⁵ Second session Fifty-sixth Congress, Record, pp. 1429 1430.

⁶ William H. Moody, of Massachusetts, Chairman.

stated that he reserved the point of order. * * * Then the demand for the regular order became general and manifest; and in accordance with a decision made at the first session of this Congress that a point of order can not be reserved by a Member if any other Member insists on an immediate decision, the Chair, in obedience to the demand for the regular order, ruled upon the question of order and sustained the point.

6871. On March 18, 1904,¹ the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read a paragraph providing for the selection of a site for a post-office station in New York City, when a question arose as to the reserving of a point of order.

The Chairman² said:

The Chair will state that if the point of order is reserved it can only be by unanimous consent, and if any gentleman of the committee calls for a ruling upon the point of order it is the duty of the Chair to rule.

6872. An amendment may not be offered to a paragraph in a bill until a point of order reserved against the paragraph has been disposed of.— On March 30, 1904,³ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

That all the powers now exercised by the Court of Private Land Claims in the approval of surveys executed under its decrees of confirmation shall be conferred upon and exercised by the Commissioner of the General Land Office from and after the 30th day of June, 1904.

Mr. James A. Hemenway, of Indiana, reserved a point of order on the paragraph.

Immediately thereafter Mr. Bernard S. Rodey, of New Mexico, proposed an amendment.

The Chairman⁴ said that pending a decision on the point of order the amendment could be read for information only.

6873. On March 31, 1904,⁵ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a point of order was reserved by Mr. James R. Mann, of Illinois, on a paragraph relating to the use of carriages in the Executive Departments.

Thereupon Mr. Robert Baker, of New York, proposed an amendment.

The Chairman⁴ said:

The Chair will state to the gentleman from New York that he can offer his amendment now for the information of the committee, but the point of order must be first decided before the amendment can be considered regularly.

6874. By offering a pro forma amendment in Committee of the Whole a Member does not lose the right to insist on his pending point of order.— On December 16, 1902,⁶ the Committee of the Whole House on the state of the Union were considering the legislative appropriation bill, when Mr. Charles L. Bartlett, of Georgia, reserved a point of order on the pending paragraph. Later Mr. James L. Robinson, of Indiana, announced that he made the point of order.

¹Second session Fifty-eighth Congress, Record, p. 3442.

²H. S. Boutell, of Illinois, Chairman.

³Second session Fifty-eighth Congress, Record, pp. 3994, 3995.

⁴Theodore E. Burton, of Ohio, Chairman.

⁵Second session Fifty-eighth Congress, Record, p. 4068.

⁶Second session Fifty-seventh Congress, Record, pp. 381–383.

Debate was proceeding with the point of order reserved, when Mr. Robinson made the pro forma amendment to strike out the last word, in order to speak to the merits of the proposition.

At the conclusion of Mr. Robinson's remarks, Mr. Jacob H. Bromwell, of Ohio, rising to a point of order, said:

The gentleman from Indiana made the point of order that this is new legislation. Afterwards, in rising to make the speech which he has just finished, he offered an amendment to this bill, moving to amend by striking out the last word. The point of order I want to make is that by offering this amendment and afterwards discussing it, that amendment being to strike out the last word, he has waived the point of order which he originally made, and therefore, as discussion has taken place on a proposed amendment to the bill, the point of order can not be raised either by the gentleman or by anyone else at this time.

After debate the Chairman¹ ruled:

As the Chair understands it, the parliamentary situation is as follows: The gentleman from Georgia raised the point of order as against the paragraph in lines 21 to 25, page 87, and lines 1 to 5 on page 88. He reserved the point of order pending the discussion of the paragraph. The gentleman from Indiana gave notice that if the reservation of the point of order was withdrawn by the gentleman from Georgia he would renew it, and later the gentleman from Indiana made the point of order. During the discussion of the paragraph on which the point of order was made, the gentleman from Indiana [Mr. Robinson], for the purpose of further discussing the paragraph, made a formal amendment. The gentleman from Ohio [Mr. Bromwell] makes the point of order that the offering of the formal amendment by the gentleman from Indiana [Mr. Robinson] was a virtual withdrawal of the point of order.

The Chair is of the opinion that the point of order made by the gentleman from Indiana was not effected by the formal amendment offered by him for the purpose of discussing the paragraph. Therefore the Chair holds that the point of order made by the gentleman from Ohio was not well taken, and overrules it.

The question is on the point of order made by the gentleman from Indiana on the paragraph in question—that the language objected to is new legislation. That point of order is sustained.

6875. A reserved point of order being withdrawn, a Member may at once renew it.—On February 15, 1901,² the bill (H. R. 6038) “for the relief of John W. Penny” and others, was under consideration in Committee of the Whole House, a point of order being pending.

Mr. Marlin E. Olmsted, of Pennsylvania, raised the question that the pending point of order was made too late.

The Chairman³ said:

The Chair calls the gentleman's attention to the fact that the point of order was reserved by the gentleman from Massachusetts [Mr. Moody] before there was any discussion, and later on the gentleman from Massachusetts [Mr. Moody] served notice that he would withdraw the point of order, and it was immediately renewed by the gentleman from New York [Mr. Ray]. There is no doubt but that the gentleman from New York had the right to renew the point of order. If that were not true, some one friendly to a bill might reserve a point of order, and other members of the House by that action would have notice that the point of order had been reserved. Then if the gentleman could later on withdraw the point of order after the bill had been discussed, it would defeat the object of members who possibly would have desired to reserve a point of order.

6876. Where discussion on the merits proceeds while a point of order is reserved, it precludes the making of a second point of order after a deci-

¹F. W. Mondell, of Wyoming, Chairman.

²Second session Fifty-sixth Congress, Record, p. 2486.

³James A. Hemenway, of Indiana, Chairman.

sion as to the first.—On January 30, 1907,¹ the Agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read a paragraph making an emergency appropriation for investigation as to the cotton boll weevil.

Mr. John J. Fitzgerald, of New York, reserved a point of order against certain words of the paragraph providing that the appropriation should “be immediately available.”

Debate then proceeded on the merits,² after which the Chairman³ sustained the point of order.

Thereupon Mr. George W. Norris, of Nebraska, proposed a point of order against another portion of the paragraph.

The Chair declined to entertain the point of order, saying:

The Chair is of the opinion that where a point of order is reserved and the merits of the question involved are discussed in addition to the point of order, that constitutes discussion of the paragraph. In this instance the point of order was not discussed at all. The merits of the proposition involved in the portion to which the point of order was raised was discussed.

6877. A question of order just decided on appeal may not be renewed on the suggestion of additional reasons.—On April 16, 1864,⁴ the Speaker announced as the business next in order the bill of the House (H. R. 395) to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof.

Mr. William S. Holman, of Indiana, made the point of order that the bill must first receive its consideration in Committee of the Whole, and the point was overruled and the Chair was sustained on an appeal.

Mr. Fernando Wood, of New York, also made the point of order on grounds somewhat different from those advanced by Mr. Holman. The Speaker overruled this point of order also, and on an appeal was sustained.

Mr. Holman proposed to renew the point of order just made on the suggestion that other sections of the bill than those already referred to contained an appropriation.

The Speaker⁵ decided that the point of order could not be renewed, on the ground that such a practice would open the door to an indefinite number of appeals, and he referred to a decision in the Thirty-second Congress in confirmation of his decision.

From this decision of the Chair Mr. Holman appealed; and the question being put, “Shall the decision of the Chair stand as the judgment of the House?” it was decided in the affirmative.

So the decision of the Chair was sustained.

6878. Where any portion of a proposed amendment is out of order it is sufficient ground for the rejection of the whole amendment.—On

¹ Second session Fifty-ninth Congress, Record pp. 1983–1985.

² Of course this debate on the merits proceeded only by unanimous consent as any Member might have demanded a decision of the question of order.

³ David J. Foster, of Vermont, Chairman.

⁴ First session Thirty-eighth Congress, Journal, p. 537; Globe, p. 1680.

⁵ Schuyler Colfax, of Indiana, Speaker.

July 22, 1882,¹ the House had under consideration the bill to regulate rates of postage on second-class mail matter at letter-carrier offices.

Mr. Richard W. Townsbend, of Illinois, moved an amendment which would abolish the postage on second-class mail matter and allow the same to go free.

Mr. Stanton J. Peelle, of Indiana, made the point of order that the amendment was not in order, not being germane to the subject-matter of the bill.

Mr. Hernando D. Money, of Mississippi, made the further point of order that the amendment being the substance of a bill referred to the Committee on the Post-Office and Post-Roads, was not in order under clause 4 of Rule XXI.²

After debate on the points of order, the Speaker³ sustained the same, and held that where any portion of a proposition submitted was out of order it was sufficient ground for the rejection of the entire proposition.

6879. On December 7, 1898⁴ the House was considering the bill (H. R. 7130) entitled "An act to regulate commerce," relating to the sale of railroad tickets, and more commonly known as the "anti-scalpers bill."

Mr. Albert M. Todd, of Michigan, presented an amendment relating to the subject of the sale of tickets, but also including other portions relating to the issue of passes by railroads, etc.

Mr. William P. Hepburn, of Iowa, having made a point of order against the amendment, the Speaker⁵ held:

This bill is a proposition to regulate the sale of tickets. The proposition of the gentleman from Michigan seems to be quite different. * * * The Chair listened to the reading of the amendment, and it seemed to the Chair not to be germane. The Chair sustains the point of order. * * * The proposition is encumbered with a great deal that has nothing to do with the topic under discussion.

6880. On February 25, 1904,⁶ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Chairman had ruled out of order an amendment proposed by Mr. Theodore A. Bell, of California.

Thereupon Mr. Bell, rising to a parliamentary inquiry, asked if the point of order was sustained as to the entire amendment.

The Chairman⁷ said:

It is well settled that where there is in an amendment any provision which is out of order the whole amendment falls with it.

6881. A point of order may be made to the whole or to a part only of a paragraph.—On February 22, 1904,⁸ during consideration of the naval appropriation bill in Committee of the Whole House on the state of the Union, Mr. William W. Kitchin, of North Carolina, rising to a parliamentary inquiry, asked

¹First session Forty-seventh Congress, Journal, p. 1704.

²This rule no longer exists.

³J. Warren Keifer, of Ohio, Speaker.

⁴Third session Fifty-fifth Congress, Record, pp. 43, 44; Journal, p. 21.

⁵Thomas B. Reed, of Maine, Speaker.

⁶Second session Fifty-eighth Congress, Record, p. 2384.

⁷Marlin E. Olmsted, of Pennsylvania, Chairman.

⁸Second session Fifty-eighth Congress, Record p. 2227.

if a point of order must apply to the whole of a paragraph, or if it might apply to certain lines of the paragraph.

The Chairman,¹ held that the point of order might be made as to the whole paragraph, or as to a part of it only.

6882. The fact that a point of order is made against a portion of a paragraph does not prevent another point against the whole paragraph.—On March 2, 1904,² the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read a paragraph relating to the reconstruction of the Anacostia Bridge, with certain provisos relating to the future use of said bridge.

Mr. George A. Pearre, of Maryland, made a point of order against certain of these provisos, but not as to the main portion of the paragraph.

There was some debate as to the point of order, but none as to the merits; after which Mr. Charles R. Davis, of Minnesota, made a point of order against the whole paragraph.

Mr. James T. McCleary, of Minnesota, raised the question that the point of order came too late.

The Chairman³ overruled the point of order.

Thereafter the Chairman sustained the point of order because the provisos were out of order, without expressing an opinion as to whether the main portion of the paragraph was out of order. So the whole paragraph went out.

6883. A point of order being made against an entire paragraph, the whole of it must go out if a portion merely is subject to the objection.—On February 26, 1904,⁴ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a point of order was made on a paragraph of the bill containing a provision for the erection of an armor plate factory.

Mr. John F. Rixey, of Virginia, rising to a parliamentary inquiry, said:

As I understand it, the objection to this paragraph is upon the latter part of it, and that the first portion, down to and including line 9, by itself, would not be subjected to the point of order.

The Chairman⁵ said:

The Chair understands that the point of order was made against the entire paragraph from line 6 to line 14, because it contains legislation contrary to the rules, As one portion of it contains such legislation, the point of order must be sustained, and, following other established precedents, the whole paragraph must fall.

6884. A point of order being made against an entire paragraph, and being sustained because a portion only is out of order, the entire paragraph goes out; but it is otherwise if the point is made only against the portion out of order.—On January 10, 1907,⁶ during consideration of the Army appropriation bill in Committee of the Whole House on the state of the Union,

¹ William P. Hepburn, of Iowa, Chairman.

² Second session Fifty-eighth Congress, Record, pp. 2699, 2700.

³ George P. Lawrence, of Massachusetts, Chairman.

⁴ Second session Fifty-eighth Congress, Record, p. 2438.

⁵ Marlin E. Olmsted, of Pennsylvania, Chairman.

⁶ Second session Fifty-ninth Congress, Record., p. 904.

Mr. John A. T. Hull, of Iowa, as a parliamentary inquiry asked whether or not, if part of a paragraph was held subject to a point of order, the whole paragraph would be stricken from the bill.

The Chairman¹ replied:

If the point of order was made against the entire paragraph, yes; but if the point of order was directed against particular words in the paragraph, then only the words designated go out.

6885. On January 24, 1905,² the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a point of order was made against a paragraph on the strength of a proviso involving legislation.

The Chairman having sustained the point of order, the whole paragraph was stricken out.

Mr. James T. McCleary, of Minnesota, having asked if the point of order was good against the whole paragraph, the Chairman³ said:

The point of order is made against the paragraph. It is not the duty of the Chair to separate that part which is subject to the point of order and that which is not.

6886. An amendment being offered, and the reading having begun, a point of order may interrupt the reading and the Chair may rule the amendment out if enough has been read to show that it is out of order.—On March 11, 1898,⁴ the House in Committee of the Whole House was considering the bill (H. R. 4936) for the allowance of certain claims for stores and supplies, etc., reported by the Court of Claims under the provisions of the Bowman Act.

To the first section of this bill Mr. William H. Moody, of Massachusetts, offered a long amendment to provide for the payment of a list of French spoliation claims.

After the reading of the amendment had proceeded for some time, Mr. John S. Williams, of Mississippi, made the point of order that the reading had progressed far enough to show that the amendment was out of order. Therefore he asked that it be ruled out, as further reading would be dilatory.

The Chairman⁶ held:

The Chair is ready to rule upon the point of order, and upon the question as to whether the amendment is germane there has been no doubt in the mind of the Chair from the beginning. The Chair is only embarrassed in this particular. The other day an amendment was offered to an appropriation bill which the Chair thought plainly out of order and against the rules of the House, and the Chair ruled it out of order, but the Committee of the Whole very promptly overruled the decision of the Chair. The trouble is that if the Chair decides this point of order well taken, as the Chair is disposed to do, the Chair does not know what the committee may do. The committee may overrule the Chair. * * * If the Chair sustains this point of order, as the Chair is inclined to do, having no doubt that the amendment is not germane to this bill, the Chair does not know but what some gentleman may appeal, and the committee overrule the Chair. * * * Now, in case that contingency should happen—and the Chair does not question the integrity of the House about it, because the House may have one opinion in reference to it and the Chair may have another—if the Committee should overrule the decision of the Chair, then the committee would be in the condition of having an amendment pending which had not been read at all to the committee. Now, that is the difficulty, and the only difficulty which the Chair sees. The Chair thinks that he will take the responsibility of ruling that the amendment is not in order.

¹ Frank D. Currier, of New Hampshire, Chairman.

² Third session Fifty-eighth Congress, Record, p. 1321.

³ James R. Mann, of Illinois, Chairman.

⁴ Second session Fifty-fifth Congress, Record, p. 2735.

⁵ Sereno E. Payne, of New York, Chairman.

6887. On January 8, 1901,¹ during consideration of the bill (H. R. 12740) making an apportionment of Representatives in Congress," etc., Mr. Champ Clark, of Missouri, offered as an amendment a proposition for establishing a Territorial government in the District of Columbia.

After a portion of the proposed amendment had been read, Mr. Albert J. Hopkins, of Illinois, made the point of order that the amendment was shown, by that portion already read, not to be germane.

The Speaker² sustained the point of order.

6888. A point of order should be made when a matter is presented, and not after consideration, and on a succeeding day.

When it is proposed to refer with instructions, an amendment to the instructions should be germane thereto.

On February 6, 1849³ a bill relating to the United States district courts of Virginia was under consideration.

The question having recurred on agreeing to the motion made by Mr. Samuel F. Vinton, of Ohio, that the bill be recommitted to the committee with instructions to inquire into the expediency of providing "that, where the salary now allowed by law to any district judge of the United States is less than \$2,000, the same shall be raised to the sum of \$2,000 from and after January 1, 1849,"

Mr. Howell Cobb, of Georgia, moved the following amendment to the instructions:

And that the committee be also instructed to inquire into the expediency of equalizing the salaries of the marshals and district attorneys of the United States.

Mr. Robert Toombs, of Georgia, raised a question of order as to these instructions and the instructions heretofore proposed.

The Speaker⁴ decided that it was now too late to raise a question of order as to the original instructions, as they had been received without objection when the bill was before under consideration, and had become a part of the Journal of the House. The original instructions, the Chair further stated, though not relating strictly to the particular provisions of the bill, were pertinent to its general subject. The only question of order now before the House was in regard to the amendment to the instructions. The Chair ruled that amendment out of order, on the ground of irrelevancy, under the fifty-fifth rule⁵ of the House. The bill which it was proposed to reconsider with these instructions related to a judicial salary, and the original instructions, on which the Chair had already remarked, went no further.

6889. After the House has actually entered upon the consideration of a bill it is too late to make a point of order that it was not properly reported from the committee.—On May 22, 1906,⁶ Mr. Lucius N. Littauer, of New York, from the Committee on Appropriations, reported a bill (H. R. 19572)

¹ Second session Fifty-sixth Congress, Record, p. 744.

² David B. Henderson, of Iowa, Speaker.

³ Second session Thirtieth Congress, Journal, p. 382.

⁴ Robert C. Winthrop, of Massachusetts, Speaker.

⁵ Now section 7 of Rule XVI. See section 5767 of this volume.

⁶ First session Fifty-ninth Congress, Record, pp. 7246, 7247.

making appropriations to supply additional urgent deficiencies in appropriations for the fiscal year 1906, and for other purposes.

The bill was then considered in Committee of the Whole House on the state of the Union, and after consideration the Committee of the Whole rose and reported the bill with a favorable recommendation.

Mr. Oscar W. Underwood, of Alabama, made the point of order that the bill had not been reported properly from the Committee on Appropriations, Mr. Littauer having admitted during debate in Committee of the Whole that the report of the bill had been authorized at an informal meeting of the committee "by asking the assent of all those members of the committee who were in the neighborhood—a majority."

The Speaker¹ held:

The Chair * * * overrules the point of order which the gentleman from Alabama makes. Turning to page 635 of the Manual and Digest the Chair finds the following decision: "The House having voted to consider a report it is too late to question whether or not the report has been made properly." Now, not only * * * the House has actually considered it by referring it to the Committee of the Whole House on the state of the Union, but that committee has reported it; the big committee consisting of all the Members of the House has reported it back to the House with the recommendation that it do pass, and the Chair could not under the precedents, and the principle if there were no precedents, nullify by a ruling the action of the great committee and of the House in referring the bill to that committee for consideration.

6890. A point of order relating to the manner in which a resolution should be considered, may be made at any time before the consideration begins.—On January 24, 1885,² Mr. Edward K. Valentine, of Nebraska, as a privileged question, called up a resolution submitted by him on the previous day, which provided for beginning the sessions of the House at 11 a. m., for devoting an hour immediately after the reading of the Journal to certain business, etc.

Mr. Samuel J. Randall, of Pennsylvania, made the point of order that under clause 43 of Rule XI³ the resolution must be referred to the Committee on Rules.

Pending this, Mr. Valentine made the further point of order that the question of order submitted by Mr. Randall could not now be entertained, but should have been made on the preceding day, when the resolution was presented.

After debate on the points of order, the Speaker⁴ sustained the first and overruled the second point of order, on the ground that the resolution, having been presented under the authority of and in conformity with clause 1 of Rule XXVIII,⁵ was before the House subject to all other rules touching its consideration, and that, as the resolution was not presented on the preceding day for immediate consideration, the point of order as to such consideration by the Committee on Rules would be in order at any time before such consideration had been entered upon. The said resolution must therefore be referred, under clause 43 of Rule XI, to the Committee on Rules.

¹ Joseph G. Cannon, of Illinois, Speaker.

² Second session Forty-eighth Congress, Journal, p. 332.

³ Now section 51 of Rule XI. See section 4321 of this volume.

⁴ John G. Carlisle, of Kentucky, Speaker.

⁵ This rule then provided that notice of one day should be given of motion to change the rules. See section 6790 of this volume.

6891. Under the later practice of the House a point of order may not be made as to a proposition after debate has begun on it.—On July 6, 1848,¹ on motion of Mr. Washington Hunt, of New York, the House resumed consideration of a motion made on the preceding day to reconsider the vote on agreeing to the first of the resolutions accompanying the report made by Mr. Hunt on the 23d of June last from the Committee on Commerce upon the subject of the improvement of rivers and harbors by the General Government, the memorial of the Chicago convention, and upon the veto message of the President of the United States at the present session upon the bill of the last session making appropriations for similar objects.

Mr. Caleb B. Smith, of Indiana, raised the question of order that, the previous question having been ordered on all of the resolutions, the motion to reconsider the first of the resolutions, which Mr. Turner was proceeding to debate, was not, therefore, debatable.

The Speaker² decided that it was now too late to raise the point of order, the same having been overruled on the preceding day and the debate having proceeded under that decision.

On appeal the decision of the Chair³ was sustained.

6892. On January 30, 1884,⁴ Mr. Casey Young, of Tennessee, submitted from the Committee on Expenditures in the Interior Department a resolution relating to an investigation into some work being done at the reservation at Hot Springs.

Mr. John H. Rogers, of Arkansas, raised a point of order that the whole question in reference to the resolution was already before the Committee on Public Buildings and Grounds and in process of investigation, and did not belong to the Committee on Expenditures in the Department of the Interior.

The Speaker⁵ said:

The Chair thinks that is not a point of order; but even if it were, the House has already referred this matter, as the report states, to the Committee on Expenditures in the Interior Department.

Mr. Rogers then made a point that an amendment which was proposed by Mr. William S. Holman, of Indiana, was not germane.

The Speaker ruled that the point of order came too late, as the amendment had already been received and discussed.

6893. On December 16, 1889,⁶ Mr. William M. Springer, of Illinois, introduced a bill (H. R. 6) to organize the Territory of Oklahoma, and for other purposes; which was read twice and ordered to be printed.

¹ First session Thirtieth Congress, Journal, p. 989.

² Robert C. Winthrop, of Massachusetts, Speaker.

³ It was evidently the early usage of the House to entertain a point of order at any time. Thus, on January 30, 1836 (first session Twenty fourth Congress, Journal, p. 254; Debates, p. 2447), we find that after a resolution had been debated at length and an amendment proposed Mr. Speaker Polk entertained a point of order that the matter should be considered in Committee of the Whole and overruled it on the ground that no direct appropriation was involved.

⁴ First session Forty-eighth Congress, Record, p. 752.

⁵ John G. Carlisle, of Kentucky, Speaker.

⁶ First session Fifty-first Congress, Journal, p. 21; Record, p. 195.

Pending which Mr. Charles S. Baker, of New York, by unanimous consent, introduced a bill (H.R. 7) to provide a temporary government for the Territory of Oklahoma; which was read twice by title and ordered to be printed.

Mr. Bishop W. Perkins, of Kansas, moved that the bills be referred to a select committee to consist of thirteen Members, with leave to report thereon at any time.

After debate Mr. Perkins demanded the previous question on his motion.

Mr. Nelson Dingley, jr., of Maine, made the point of order that the last part of the motion was not in order, and could only be granted by unanimous consent; and also that it had not been stated by the Chair.

The Speaker¹ overruled the point of order on the ground that the motion had been discussed, and that consequently the point of order came too late, and also held that the motion of Mr. Perkins as modified had been stated by the Chair.

6894. On January 10, 1896,² during the consideration of the rules of the House, section 57 of Rule XI being before the House, Mr. Joseph H. Walker, of Massachusetts, moved to insert after the words "Rivers and Harbors" in the list of privileged committees the words "Banking and Currency."

After debate Mr. Frank W. Mondell, of Wyoming, moved as a substitute for Mr. Walker's amendment the following:

Strike out of Rule XI, reported from the Committee on Rules, the words "Committee on Rivers and Harbors, bills relating to the improvement of rivers and harbors."

After debate Mr. Charles M. Cooper, of Florida, made the point of order that the proposed substitute was in reality an independent proposition relating to a different part of the rule, and therefore not in order.

The Speaker¹ said:

The gentleman from Florida is right but no point of order was made.

6895. On March 11, 1898,³ the House was in Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 4936) for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March 3, 1883, and commonly known as the Bowman Act, and for other purposes.

As the consideration of the bill was about to begin Mr. James D. Richardson, of Tennessee, raised a question as to points of order.

The Chairman said:

The points of order were reserved in the House before going into Committee of the Whole. * * * If there is any general point of order against the bill, it should be made now. * * * Of course any point of order as to a paragraph can be made after the paragraph is read.

After some debate had occurred Mr. John Dalzell, of Pennsylvania, made the point of order that it was not competent for the Committee on War Claims to report the bill.

After debate on the point of order the Chairman⁴ held:

The Chair has been examining the bill and report. The Chair finds by the report that this bill is a substitute for House bill No. 4255, and includes nearly all the claims embraced in that bill. The

¹ Thomas B. Reed, of Maine, Speaker.

² First session Fifty-fourth Congress, Record, pp. 567, 572.

³ Second session Fifty-fifth Congress, Record, pp. 2720-2724.

⁴ Sereno E. Payne, of New York, Chairman.

embarrassment of the Chair is in reference to the time when the point of order should be made. The Chair expressly announced that the point of order should be made at a certain time when the question was raised whether there was any point of order against the bill; and no gentleman rose to make a point of order. After that, time for debate had been fixed and had been divided between the gentleman from Tennessee [Mr. Gibson] and the gentleman from Maine [Mr. Dingley]. After that a question was asked as to the parliamentary status of the bill. The Chair thinks that the point of order comes too late.

6896. On March 19, 1898,¹ in Committee of the Whole House on the state of the Union, considering the Post-Office appropriation bill, a paragraph relating to the carrying of mails by electric and cable cars was read, and debate had proceeded and an amendment had been offered when Mr. James H. Lewis, of Washington, proposed to raise a point of order against a portion of the paragraph.

Mr. Sereno E. Payne, of New York, made the point of order that the point of order came too late.

The Chairman² sustained the point of order, saying:

The gentleman should have raised the point of order when the paragraph was read, and not have waited until after debate had been had on the paragraph.

6897. On April 21, 1904,³ Mr. Marlin E. Olmsted, of Pennsylvania, called up A resolution providing for returning to the State of Colorado certain ballots used by the Committee on Elections No. 2, in examining the election case of *Bonyng v. Shafroth*.

After debate had begun, Mr. John S. Williams, of Mississippi, made the point of order that the resolution might not be presented as a matter of privilege.

After debate the Speaker⁴ held:

Certain papers necessary to be inspected to determine the right of a Member to his seat in the House seem to be on file with an election committee. It is clearly a question of privilege to obtain the papers. Perhaps it is a question of privilege, having obtained them, to dispose of them, but it is not necessary for the Chair to rule as to that. What the Chair may rule, if it was necessary to make a ruling, it is not necessary to state. The Chair dislikes to make rulings unless it is necessary to do so. We make enough precedents—sometimes mistaken ones—as it is.

The gentleman from Pennsylvania rose in his place and reported the resolution, which was read at the Clerk's desk, and proceeded to discuss it. Then, without a point of order being reserved, he again stated the purpose of the resolution, and then the point of order was made. It does seem to the Chair that even if the resolution were subject to a point of order, that point must be reserved or made at the very inception of the matter. Therefore, without passing upon the question whether the resolution is privileged, it seems to the Chair that it is before the House; and if it were necessary to make it any more before the House, we are informed that unanimous consent can be had. So that, after all, the resolution is here, and it seem to the Chair the House can act touching the matter.

6898. On January 25, 1904,⁵ the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Richard Wayne Parker, of New Jersey, proposed an amendment, and then immediately took the floor and said:

Mr. Chairman, this is subject to a point of order. The Surgeon-General of the Army finds especially upon a recent decision of the Supreme Court that a contract surgeon in charge of a hospital finds himself

¹ Second session Fifty-fifth Congress, Record, p. 3001.

² John A. T. Hull, of Iowa, Chairman.

³ Second session Fifty-eighth Congress, Record, pp. 5277, 5278.

⁴ Joseph G. Cannon, of Illinois, Speaker.

⁵ Second session Fifty-eighth Congress, Record, p. 1142.

without authority to control the men in the hospital, and military punishment can not be inflicted for disobedience of his orders, and he desires where a contract surgeon is put in charge of a hospital he shall have authority to give orders. I simply state that, and leave the amendment to the House.

Thereupon Mr. Charles H. Grosvenor, of Ohio, raised a question of order against the amendment.

The Chairman¹ held that the point of order came too late, saying:

The Chair will state that the amendment was reported from the Clerk's desk and was debated by the gentleman from New Jersey with no point of order against it having been made, and the Chair is of opinion that the point of order of the gentleman from Ohio comes too late.

6899. On December 16, 1898,² the House was in Committee of the Whole House on the state of the Union considering the bill (H. R. 11191) to extend the laws relating to customs and internal revenue over the Hawaiian Islands.

Mr. William H. Moody, of Massachusetts, offered an amendment providing for the extension also of the laws of the United States relating to the appointment of officers in the customs and internal revenue services.

Mr. Leonidas F. Livingston, of Georgia, asked if it was proposed to extend the civil service laws to Hawaii.

Mr. Moody replied to this question, whereupon Mr. Joseph G. Cannon, of Illinois, suggested a point of order.

Mr. Moody raised the question of order that the point of order came too late. The Chairman³ said:

Debate had evidently begun. The Chair thinks the point of order is not in time.

6900. On February 27, 1833,⁴ the House proceeded to consider the bill (S. 82) "further to provide for the collection of duties on imports," and Mr. Samuel P. Carson, of North Carolina, having withdrawn a motion which he had previously made to commit the bill to the Committee of the Whole, proceeded to discuss the bill.

Mr. Charles A. Wickliffe, of Kentucky, rising to a question of order, made the point that this bill must, under the rules, be considered in Committee of the Whole.

The Speaker⁵ decided that it was not in order for the Member from Kentucky to raise the question of order, and thereby deprive the Member from North Carolina of the floor.

An appeal being taken by Mr. Wickliffe, the decision of the Chair was sustained.

6901. To preclude a point of order, debate should be on the merits of the proposition.—On April 18, 1904,⁶ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Robert R. Hitt, of Illinois, proposed an amendment which embodied legislation for the exclusion of Chinese immigrants.

Mr. Oscar W. Underwood, of Alabama, reserved a point of order, and after discussion withdrew it.

¹ Marlin E. Olmsted, of Pennsylvania, Chairman.

² Third session Fifty-fifth Congress, Record, p. 267.

³ John F. Lacey, of Iowa, Chairman.

⁴ Second session Twenty-second Congress, Journal, pp. 440, 441; Debates, pp. 1823–1925.

⁵ Andrew Stevenson, of Virginia, Speaker.

⁶ Second session Fifty-eighth Congress, Record, pp. 5031, 5032.

Mr. John H. Stephens, of Texas, renewed the point of order, and after further discussion withdrew it.

Thereupon Mr. James R. Mann, of Illinois, proposed to renew the point of order.

Mr. James A. Hemenway, of Indiana, objected that an interval, and discussion had intervened between the withdrawing of the point of order by Mr. Underwood and the renewal of it.

The Chairman¹ said:

The Chair is of the impression that the discussion was not upon the merits of the bill, but informally with a view of determining some preliminary matters, and under those circumstances it would seem that Members would have the right to make the point of order.

6902. A point of order against the motion to strike out the enacting clause must be made before debate has begun.—On June 11, 1902,² the Committee of the Whole House on the state of the Union was considering the bill (H. R. 5) to authorize the construction, etc., of telegraphic cables between the United States of America and the Philippine Islands, when, the reading of the bill for amendment having begun, Mr. William C. Adamson, of Georgia, moved to strike out the enacting clause of the bill.

Debate having begun on this motion, Mr. James R. Mann, of Illinois, made the point of order that the special order under which the bill was considered provided for consideration of the bill under the five-minute rule, and therefore that the motion to strike out the enacting clause might in effect be the means of abrogating that provision of the order.

The Chairman³ said:

Without deciding the question as to whether, under the special rule under which we are proceeding, objection would have been in order if it had been made in time, the Chair is of opinion that the point of order not having been made, it is now too late to make it, just the same as in case of the rule forbidding legislation on an appropriation bill, if the point is not made when such an amendment is offered, or until after debate, it comes too late. The Chair therefore holds that the point of order is not well taken.

6903. Points of order against a conference report should be made or reserved before discussion begins.—On February 27, 1901⁴ Mr. William W. Grout, of Vermont, had presented a conference report on the District of Columbia appropriation bill and debate had begun thereon, when Mr. James M. Robinson, of Indiana, proposed to raise a point of order against the report on the ground that the conferees had exceeded their authority.

Mr. Grout objected that the point of order came too late.

The Speaker⁵ said:

The Chair is of the opinion that when discussion has been entered upon and no reservation has been made as to a point of order it comes too late afterwards to make the point, and the Chair will sustain the point of order made by the gentleman from Vermont.

¹ Edgar D. Crumpacker, of Indiana, Chairman.

² First session Fifty-seventh Congress, Record, pp. 6634, 6635.

³ John F. Lacey, of Iowa, Chairman.

⁴ Second session Fifty-sixth Congress, Record, p. 3163.

⁵ David B. Henderson, of Iowa, Speaker.

6904. On the calendar day of March 3, 1901,¹ but the legislative day of March 1, Mr. Theodore E. Burton, of Ohio, submitted the conference report on the river and harbor bill.

Before the report had been read, Mr. William P. Hepburn, of Iowa, asked if it was in order to reserve points of order at this time.

The Speaker² replied that it was in order.

6905. On March 3, 1901,³ Mr. Joseph G. Cannon, presented the conference report on the sundry civil appropriation bill. Before the reading of the report began, the Speaker² permitted Mr. James M. Robinson, of Indiana, to reserve all points of order on the bill.

6906. Although a point of order may not be made after debate has begun, yet the Chair does not permit; a few sentences of debate to preclude a point of order made by a Member who has shown due diligence.

When a Member who has reserved a point withdraws it, another Member may renew it immediately.

On June 17, 1898,⁴ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union.

Mr. Melville Bull, of Rhode Island, having offered an amendment relating to clerks for Members, Mr. Joseph G. Cannon rose to debate it, when Mr. Alexander H. Dockery, of Missouri, announced that he reserved a point of order against the amendment.

After debate Mr. Dockery withdrew his point of order, whereupon Mr. Levin I. Handy, of Delaware, announced that he made the point of order.

Mr. James S. Sherman, of New York, raised the question that the point of order came too late.

After debate the Chairman⁵ held:

The Chair thinks the question whether the point of order comes too late or not depends entirely upon whether the gentleman from Missouri [Mr. Dockery] reserved the point in time. The reporter's notes show that immediately after the offering of the amendment the following occurred:

"Mr. CANNON. This amendment, as I understand it, is offered by the gentleman from Rhode Island [Mr. BULL], a member of the Committee on Accounts?"

"Mr. BULL. It is.

"Mr. CANNON. I want to say that I shall not make a point of order on that provision. A good many Members of the House who are chairmen of committees, having annual clerks, and a good many who are not, have spoken to me about the matter.

"Mr. DOCKERY. I should like to reserve a point of order until I hear what the amendment is.

"The CHAIRMAN. What is the remark of the gentleman from Missouri?"

"Mr. DOCKERY. I should like to reserve a point of order.

"Mr. CANNON. There is such a sentiment at least upon the part of some Members that I felt I ought not to make the point of order-and, so far as I am concerned, I shall not. Any other gentleman can, if he chooses."

Now, the Chair is inclined to think that the reservation of the point of order did not come too late from the gentleman from Missouri, and therefore if the gentleman from Delaware [Mr. Handy] insists on the point of order, the Chair holds that it is pending. * * *

¹ Second session Fifty-sixth Congress, Record, p. 3325.

² David B. Henderson, of Iowa, Speaker.

³ Second session Fifty-sixth Congress, Record, p. 3570.

⁴ Second session Fifty-fifth Congress, Record, p. 6092.

⁵ Sereno E. Payne, of New York, Chairman.

The Chair would state that the gentleman from Illinois had said that he would make no point of order, or words to that effect. He was proceeding, as a matter of fact, with a further statement in regard to the amendment being offered by the gentleman, and was, in fact—although the reporter's notes may not show that he was interrupted in that sentence by the statement of the gentleman from Missouri, that he should like to reserve the point of order, and the Chair asked "What was the observation of the gentleman from Missouri?" and he replied that he reserved the point of order.

Now, when one Member reserves a point of order against any amendment, and reserves it in time, of course it cuts off every other Member from an opportunity to reserve the point of order; and afterwards, if he wishes to withdraw the point of order, it is the privilege of any member of the committee to renew it, and of course the gentleman from Delaware has that right. He does renew it, and makes the point of order. Under the rules this amendment is not in order if the point is made in time; and the Chair thinks that the Committee of the Whole can not afford any other rule and to confine a Member so closely that when a Member rises in debate to say that in his first sentence of debate he can not be interrupted by a point of order by any other Member.

Mr. Bull appealed from the decision of the Chair, but later withdrew the appeal.

6907. A point of order against a proposition must be made before an amendment is offered to it.—On April 26, 1890,¹ the House was in Committee of the Whole House on the state of the Union considering the legislative, executive, and judicial appropriation bill.

The paragraph relating to the salary of the Commissioner of Patents had been amended, and the Clerk had begun to read the next paragraph, when Mr. Joseph E. Washington, of Tennessee, raised a point of order as to the salary of the Commissioner.

Mr. Benjamin Butterworth, of Ohio, made the point of order that the point of order came too late.

The Chairman² sustained Mr. Butterworth's point of order.

Mr. Washington having appealed, the decision of the Chair was sustained.

6908. On February 26, 1898,³ the House was considering the sundry civil appropriation bill by paragraphs in Committee of the Whole House on the state of the Union. By unanimous consent, a paragraph relating to river and harbor improvements was returned to, and Mr. William H. Moody, of Massachusetts, offered an amendment.

Mr. William P. Hepburn, of Iowa, rising to a parliamentary inquiry, asked if they had returned to the paragraph for all purposes.

The Chairman⁴ replied that the committee had returned to it for all purposes.

Mr. Hepburn then asked if it was in order to make a point of order against the paragraph.

The Chairman said:

The Chair would state that an amendment has been offered and the point of order might hold against the amendment. Against the paragraph, the Chair thinks it comes too late, the gentleman from Massachusetts having been recognized and the amendment read from the desk.

6909. On May 27, 1902,⁵ the Committee of the Whole House on the state of the Union was considering the bill (H. R. 12199) to regulate the immigration

¹ First session Fifty-first Congress, Record, p. 3892.

² Lewis E. Payson, of Illinois, Chairman.

³ Second session Fifty-fifth Congress, Record, p. 2247.

⁴ Sereno E. Payne, of New York, Chairman.

⁵ First session Fifty-seventh Congress, Record, pp. 6011–6013.

aliens into the United States, when Mr. Charles B. Landis, of Indiana, offered the following amendment:

Add as an additional section after section 4 the following:

“That no intoxicating liquors of any character shall be sold within the limits of the Capitol building of the United States.”

To this, before debate had intervened, Mr. Charles K. Wheeler, of Kentucky, offered an amendment to the amendment.

Mr. Richard Bartholdt, of Missouri, after the amendment to the amendment had been entertained by the Chair, proposed a point of order against the original amendment of Mr. Landis.

The Chairman ¹ said:

The gentleman from Missouri makes the point of order that the point of order to the amendment offered by the gentleman from Indiana can now be made. The amendment offered by the gentleman from Indiana was pending and no gentleman of the committee addressed the Chair, and the Chair recognized the gentleman from Kentucky, who offered an amendment to the amendment. It has been uniformly held that under the rule a point of order can not be made after an amendment has been considered, and an amendment offered to an amendment is consideration of the pending amendment. There seems to be no exception to these precedents, and the Chair would hold that the amendment having been offered by the gentleman from Kentucky to the amendment offered by the gentleman from Indiana, it would now be too late to raise the point of order.

6910. On March 29, 1904,² the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read a paragraph relating to the enforcement of the Chinese exclusion act.

Mr. E. J. Livernash, of California, immediately proposed an amendment, which was read, and against which a point of order was made.

During debate on the point of order, Mr. James A. Hemenway, of Indiana, proposed to raise a question of order against the original paragraph.

The Chairman ³ said:

When a provision in a bill which is out of order is read and is unobjected to, it becomes a part of the bill. The question whether it is in order or not, whether it is a variation from established law or not, is then foreclosed. The paragraph is settled and passed upon by the committee. Then, if an amendment is proposed here and discussion intervenes no point of order can be allowed to the paragraph; it is beyond that stage.

6911. On April 16, 1904,⁴ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a paragraph of the bill was read providing for compensation to the clerk of the Committee on Industrial Arts and Expositions.

Mr. George W. Smith, of Illinois, proposed an amendment which was ruled out on a point of order.

Thereupon Mr. Smith raised a question of order against the paragraph in the bill.

Mr. James A. Hemenway made the point of order that the question was raised too late.

¹ Henry S. Boutell, of Illinois, Chairman.

² Second session Fifty-eighth Congress, Record, pp. 3958, 3959.

³ Theodore E. Burton, of Ohio, Chairman.

⁴ Second session Fifty-eighth Congress, Record, p. 4952.

The Chairman¹ held that a point of order against a proposition must be made before an amendment is offered to it.

6912. The House having voted to consider a matter, a point of order against it comes too late.—On February 15, 1890,² Mr. Mark H. Dunnell, of Minnesota, from the Select Committee on the Eleventh Census, to which was referred the bill of the Senate (S. 1181) to require the Superintendent of Census to ascertain the number of people who own farms and homes and the amount of mortgage indebtedness thereon, reported the same without amendment.

Mr. C.B. Kilgore, of Texas, raised the question of consideration against the bill.

And the question being put, "Will the House now consider the bill?" it was decided in the affirmative; and the House accordingly proceeded to its consideration.

Mr. Kilgore made the point of order that the bill must receive its first consideration in a Committee of the Whole.

The Speaker³ overruled the point of order on the ground that it was made too late, the House having decided to consider the bill.

6913. On March 2, 1891,⁴ Mr. William E. Simonds, of Connecticut, submitted a conference report on the bill (H. R. 10881) relating to copyrights, upon which Mr. Albert J. Hopkins, of Illinois, raised the question of consideration.

The House having voted to consider the report, and debate having begun, Mr. Daniel Kerr, of Iowa, made the point of order that the conference report was not complete, and did not comply with the rules of the House.

The Speaker³ ruled that the point of order was made too late.⁵

6914. On December 11, 1902,⁶ the House had voted to consider a report of the Committee on Elections No. 2 in relation to the Missouri election case of *Wagoner v. Butler*, when Mr. James D. Richardson, of Tennessee, as a parliamentary inquiry, raised a question of the power of the House to take the proposed action.

The Speaker⁷ said:

Answering the parliamentary inquiry of the gentleman from Tennessee, the Chair calls attention to several decisions holding that, the House having voted to consider a measure, a point of order against it comes too late. The gentleman from Pennsylvania is entitled to the floor.

6915. When the House is voting on a motion, it is too late to make the point of order that the motion is not in order.—On February 24, 1897,⁸ a resolution from the Committee on Accounts was under consideration, when Mr. Grove L. Johnson, of California, moved that it be referred to the Committee on Printing.

Mr. Sereno E. Payne moved the previous question, which was ordered.

The question being taken on the motion to refer there were 72 in the affirmative.

¹Edgar D. Crumpacker, of Indiana, Chairman.

²First session Fifty-first Congress, Journal, p. 233; Record, p. 1353.

³Thomas B. Reed, of Maine, Speaker.

⁴Second session Fifty-first Congress, Journal, p. 346; Record, p. 3711.

⁵For a similar ruling, see third session Forty-sixth Congress, Journal, p. 364.

⁶Second session Fifty-seventh Congress, Record, p. 231.

⁷David B. Henderson, of Iowa, Speaker.

⁸Second session Fifty-fourth Congress, Record, p. 2211.

Before the negative vote had been announced, Mr. J. Frank Aldrich, of Illinois, rising to a parliamentary inquiry, asked if it was in order to make the point of order that the motion to refer was not in order.

The Speaker¹ replied:

The point could not be entertained now.

6916. The alleged lateness of a point of order may not be urged after the Chair has ruled.—On December 16, 1904,² the Committee of the Whole House was considering the bill (H. R. 8113) for the relief of Agnes W. Hills and Sarah J. Hill. The bill was read, and then, on request of Mr. Sereno E. Payne, of New York, the report of the committee on the bill was read. Thereupon Mr. Payne made the point of order that the bill had been reported from the Committee on Claims, whereas the jurisdiction belonged to the Committee on War Claims.

After debate as to jurisdiction the Chairman sustained the point of order.

Then Mr. Joseph V. Graff, of Illinois, suggested that it was too late for Mr. Payne to make the point of order after the report had been read.

The Chairman³ said:

The Chair will say to the gentleman from Illinois [Mr. Graff] that that is the general rule; but it would only have been fair to the Chair to have called his attention to that fact prior to his decision. The decision of the Chair was made upon what the Chair understands to be the precedents of the House, and on the case that was made upon the floor. The point of order made by the gentleman from Illinois [Mr. Graff] was not made in time. The Chair stands by his ruling.

6917. A motion once made and carried is binding, although in the first instance it might have been ruled out had a point of order been made in time.—On July 29, 1846,⁴ the Speaker announced as the first business in order the bill (S. 57) to amend an act entitled "An act to provide revenue from imports," etc., which had been made a special order for this day.

Mr. Linn Boyd, of Kentucky, moved that the consideration of the bill be postponed until to-morrow, and that the House proceed to the consideration of business from the Senate on the Speaker's table. This motion was agreed to. And so the House determined by a majority to proceed to consider business from the Senate on the Speaker's table.

The Speaker having announced the first bill in order, Mr. Robert C. Winthrop, of Massachusetts, raised a question of order that the motion to postpone the special order and take up the business of the Senate, being carried by a majority and not by a two-thirds vote, only that part of the motion which could be controlled by a majority, viz, the postponement of the special order, could be considered as decided; and that, as it required two-thirds to change the regular order of business, the House must now proceed to the business regularly in order, and not to the business of the Senate on the Speaker's table.

The Speaker⁵ decided that this question might have been raised before the question was taken on the motion of Mr. Boyd; that it was now too late to raise

¹ Thomas B. Reed, of Maine, Speaker.

² Third session Fifty-eighth Congress, Record, p. 379.

³ P. P. Campbell, of Kansas, Chairman.

⁴ First session Twenty-ninth Congress, Journal, p. 1170; Globe, p. 1164.

⁵ John W. Davis, of Indiana, Speaker.

the question; and that the House having ordered the special order to be postponed, and directed at the same time what business should be next considered, it was the duty of the Speaker to proceed to the business thus indicated by the House.

6918. One point of order against a resolution having been made and decided, and the previous question having been demanded, it was held to be too late to raise a second question of order.—On February 10, 1860,¹ Mr. Freeman H. Morse, of Maine, offered a resolution relating to the employment of clerks to committees.

A point of order was made that, as this was private bill day, the resolution was not in order.

The Speaker overruled the point of order, and on appeal the decision was sustained by a yea-and-nay vote laying the appeal on the table.

Thereupon, before the resolution had been debated on its merits and while the question was pending on ordering the previous question, Mr. John U. Pettit, of Indiana, raised the question of order that the gentleman from Maine had exhausted his privilege in respect to the introduction of resolutions.²

The Speaker³ decided that the point of order came too late.

An appeal which was taken was laid on the table, yeas 96, nays 63.

6919. Debate on a point of order is for the information of the Chair, and therefore within his discretion.—On April 11, 1874,⁴ a point of order having been made against the votes of several Members who were officers of national banks, and who were therefore claimed to have an interest which disqualified them from voting on the pending measure, which related to national banks, some debate began upon the point of order.

Mr. Charles Albright, of Pennsylvania, objected to debate.

The Speaker⁵ said:

The Chair has the right to hear discussions upon a point of order, and on one of this magnitude the Chair has no desire to abridge discussion.

6920. On February 3, 1905,⁶ the Post-Office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. George W. Cromer, of Indiana, claimed that he was entitled to the floor to debate a pending point of order.

The Chairman⁷ said:

Debate is now proceeding on the point of order, and it is in the discretion of the Chair as to how long debate shall proceed on a point of order.

6921. Points of order are usually reserved when appropriation bills are referred to the Committee of the Whole in order that portions in

¹ First session Thirty-sixth Congress, Journal, p. 234; Globe, p. 729.

² The rules relating to the introduction of resolutions by Members have been changed since that time.

³ William Pennington, of New Jersey, Speaker.

⁴ First session Forty-third Congress, Record, p. 3020.

⁵ James G. Blaine, of Maine, Speaker.

⁶ Third session Fifty-eighth Congress, Record, p. 1846.

⁷ George P. Lawrence, of Massachusetts, Chairman.

violation of rule may be eliminated by raising points of order in committee.

The Committee of the Whole must report in its entirety a bill committed to it unless the House by a reservation of points of order sanctions the striking out of portions against order.

On June 11, 1884,¹ the House was considering the river and harbor appropriation bill in Committee of the Whole House on the state of the Union, and the committee had reached a paragraph of the bill providing for the construction of a canal from the Illinois River, near the town of Hennepin, to the Mississippi River.

Mr. Burr W. Jones, of Wisconsin, made a point of order against this paragraph, that the Committee on Rivers and Harbors had no jurisdiction of the subject, etc.

The point was then raised that this point might not be made, since points of order had not been reserved² on the bill when it was committed to the Committee of the Whole. Mr. Joseph G. Cannon, of Illinois, referred to this paragraph of the Manual and Digest:

In case of an appropriation reported by the Committee on Appropriations in conflict with Rule XXI, clause 3, and committed with the bill, it is not competent for the Committee of the Whole or its Chairman to rule it out of order, because the House having committed the bills (of course it is otherwise where the point was reserved before commitment), are presumed to have received as in order the report in its entirety.

In deciding the question of order the Chairman³ said:

The Chairman of the Committee of the Whole on the state of the Union is asked to withhold from the consideration of the committee a particular clause in an original bill on the ground that the Committee on Rivers and Harbors reporting the bill to the House did not have jurisdiction over the subject matter of the particular clause. In the view which the Chairman of the Committee of the Whole takes of the question it is not necessary to decide whether the Committee on Rivers and Harbors has jurisdiction over the subject-matter of this particular clause or not. Whether it originally possessed that jurisdiction it is not necessary for the Chair to decide in the view which he takes of this question. Hence the Chair will not take the time to express any opinion in reference to it.

The view of the Chair is this: The action of the House in submitting this bill to the Committee of the Whole on the state of the Union for consideration does not leave it within the province of the Chair to pass upon the question of original jurisdiction in the Committee on Rivers and Harbors. The bill has been committed to the Committee of the Whole for the purpose of consideration, and the chairman of this committee believes that he is but executing the order of the House when he decides that the bill shall be considered. The committal of the bill to the Committee of the Whole House on the state of the Union, the Chair thinks, was not a submission to the committee of the question whether or not the bill should be considered, but an express direction to the committee to consider the bill. To hold that the chairman of the Committee of the Whole on a point of order could go back and inquire into asserted irregularities and errors in the stages of the bill which preceded its reference to the Committee of the Whole would be either to cothe the chairman of the Committee of the Whole with power to review and reverse the order of the House in the matter of the reference or place the House in the anomalous position of having expressly directed the Committee of the Whole to do a particular thing and at the same time left the committee to determine whether the thing directed should be done or not.

The point of order raised by the gentleman from Indiana is overruled.

¹First session Forty-eighth Congress, Record, p. 5014.

²On March 31, 1882 (First session Forty-seventh Congress, Record, p. 2466), Mr. Speaker Keifer spoke of the practice of reserving points of order as one that had grown up in the House and which he recognized.

³Olin Welborn, of Texas, Chairman.

The Chair then read again the paragraph from the Digest which Mr. Cannon had already read, and then went on to say:

The Chair would state further, in connection with that practice in Committee of the Whole, that if all points of order had been reserved upon this bill at the time it was committed to the Committee of the Whole on the state of the Union¹ the chairman of this committee, with the view he entertains of the question, would hesitate before undertaking to pass upon the original jurisdiction of the Committee on Rivers and Harbors. But the very most that could be done (and on this the Chair is not free from doubt) would be to report the point of order back to the House for its decision.

Mr. William S. Holman, of Indiana, called attention to the claim that originally the point of order had been reserved on the bill, but the Chair had the Journal read to show that points of order were not reserved.

On appeal this decision of the Chair was sustained by a vote of 103 to 63.

6922. On January 14, 1896,² Mr. Newton M. Curtis, of New York, from the Committee on Military Affairs, reported a bill (H. R. 4043) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1897; which was, with the accompanying report, ordered to be printed and referred to the Committee of the Whole House on the state of the Union.

Mr. Alexander M. Dockery, of Missouri, said:

I desire to reserve points of order on the bill and to make the inquiry whether or not, under the practice of the House, it will be necessary to reserve points of order on appropriation bills when they are referred to the Committee of the Whole House on the state of the Union?

The Speaker³ said:

The impression of the Chair is that it is necessary so to do.

Again, on January 30, 1896, Mr. Joseph D. Sayers, of Texas, having reserved points of order on the agricultural appropriation bill, Mr. Nelson Dingley, of Maine, asked, as a parliamentary inquiry—

whether it is necessary, on an appropriation bill, when the report is presented, to reserve all points of order, and whether such points can not be made as to new legislation in the Committee of the Whole?

The Speaker said:

The Chair would be willing to hear argument, but the impression of the Chair is that if the House commits a bill to the committee without points of order being reserved, the effect will be that the committee can not disregard the orders of the House to consider that bill in its entirety; but when points of order are reserved, then advantage can be taken of them in the Committee of the Whole.

6923. On March 31, 1896,⁴ in Committee of the Whole House on the state of the Union, a point of order was raised by Mr. Martin N. Johnson, of North Dakota, against a certain paragraph in the sundry civil appropriation bill.

It having been ascertained that no points of order were reserved when the bill was committed to the Committee of the Whole, after debate the Chairman⁵ held:

In determining this question the Chair thinks it is important to take into consideration the organization and power of the Committee of the Whole, which is simply to transact such business as

¹The practice of reserving points of order in this way is recognized as early as December 19, 1870 (third session Forty-first Congress, Globe, p. 173), when Mr. Speaker Blaine stated that the reservation of points of order on the pending appropriation bill would prevent propositions changing law in Committee of the Whole.

²First session Fifty-Fourth Congress, Record, pp. 581, 1119.

³Thomas B. Reed, of Maine, Speaker.

⁴First session Fifty-fourth Congress, Record, p. 3411.

⁵Albert J. Hopkins, of Illinois, Chairman.

is referred to it by the House. Now, the House referred the bill under consideration to this committee as an entirety, with directions to consider it. The objection raised by the gentleman from North Dakota would, in effect, cause the Chair to take from the committee the consideration of part of this bill, which has been committed to it by the House. The committee has the power to change or modify this bill as the Members, in their wisdom, may deem wise and proper; but it is not for the Chairman, where no points of order were reserved in the House against the bill. * * * The effect would be, should the Chair sustain the point of order made by the gentleman from North Dakota, to take from the consideration of the Committee of the Whole a part of this bill which has been committed to it by the House without reservation of this right to the Chairman.

Now, inasmuch as no points of order were made in the House and none were reserved against any of the provisions in the bill when it was committed to this Committee of the Whole, the Chair holds that the point of order of the gentleman from North Dakota should be overruled and the Committee of the Whole should be allowed to consider the bill in its entirety, as was proposed by the House when it committed the bill to the Committee of the Whole. In rendering this decision the Chair thinks he is sustained not only by the views of the present Speaker of the House, as intimated to the House in a recent instance, but also by those of Chairmen of the Committees of the Whole in preceding Congresses. In the Forty-eighth Congress this question was presented when the river and harbor bill was under consideration. In that bill, as the Chair now remembers, there was a provision for the project known as the Hennepin Canal. When the bill was under consideration in Committee of the Whole the point of order was made against that provision. In that case points of order had been reserved in the House when the bill was committed to the Committee of the Whole; but the Chair held that if they had not been reserved he would have overruled the point of order and remitted the question to the committee.

In the first session of the Forty-eighth Congress this question was directly considered on a parliamentary inquiry made by the gentleman from Indiana (Mr. Holman), and the Chair then said:

“The Chair will cause to be read what is said by the compiler of the Digest in regard to the practice in Committee of the Whole House on the state of the Union.

“The Clerk read as follows:

“In a case of an appropriation reported by the Committee on Appropriations in conflict with Rule XXI, clause 3 (the language of which is identical with the corresponding rule that governs this body), and committed with a bill, it is not competent for the Committee of the Whole, or its Chairman, to rule it out of order, because the House are presumed to have received, as in order, the report in its entirety. So far as the proposed amendments are concerned, the current of the decisions of the Committee of the Whole House have been to exclude not only an appropriation not previously authorized by law, but also independent legislation, admitting, however, limitations and provisions which are themselves in order.”

In accordance with this principle the Chairman then ruled that, inasmuch as points of order had not been reserved by the House when the bill was committed, he therefore could not entertain the point of order made.

With these precedents in view, and in accordance with the reasons given above, the Chair overrules the point of order.

6924. On December 19, 1896,¹ the legislative, executive, and judicial appropriation bill was under consideration in Committee of the Whole House on the state of the Union. The paragraph relating to the organization of the Library of Congress having been read, Mr. John S. Williams, of Mississippi, made a point of order against it.

Mr. Henry H. Bingham, of Pennsylvania, raised the question that, as points of order were not reserved when the bill was committed to the Committee of the Whole, the bill was not now subject to the point of order.

After debate the Chairman² held:

If this were a new or original proposition, the present occupant of the chair would have no difficulty in sustaining the point of order. But my own recollection is, and I have refreshed my

¹ Second session Fifty-fourth Congress, Record, pp. 311, 312.

² William P. Hepburn, of Iowa, Chairman.

recollection by reference to certain precedents, that the practice of the House has universally been to reserve points of order against an appropriation bill, and that where that has not been done—where the bill is sent to the committee without objection—the whole of the bill is to be considered by the committee, and that it is not competent for the committee to refuse to consider any portion of the bill so committed to it.

The Chair therefore overrules the point of order.

6925. On June 17, 1898,¹ the House was considering the general deficiency appropriation bill in Committee of the Whole House on the state of the Union.

Against a paragraph in the bill relating to additional clerks for certain Federal courts, Mr. James A. Connolly, of Illinois, reserved a point of order.

Mr. Joseph G. Cannon, of Illinois, called attention to the fact that no points of order were reserved against the bill when it was committed to the Committee of the Whole.

After debate the Chairman² held:

That is the rule which, as the Chair is informed, has always been enforced with reference to appropriation bills; and the present occupant of the chair is inclined to think that the ruling is correct. If a point of order should be submitted to any paragraph of the bill, the Chair would be compelled to overrule it.

6926. Points of order are reserved at the time of reference to Committee of the Whole only on appropriation bills.—On May 14, 1906,³ Mr. Joseph W. Babcock, of Wisconsin, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of bills on the Union Calendar reported from the District Committee.

Mr. Sydney E. Mudd, of Maryland, interposed to reserve points of order against the bills.

The Speaker⁴ held that as they were not appropriation bills⁵ such reservation was not called for.

6927. Questions of order relating to procedure (as distinguished from cases of disorder or contempt)⁶ arising in Committee of the Whole, are decided by the Chairman, and the Speaker has declined to consider them.—On March 7, 1838,⁷ while the Committee of the Whole was considering the civil and diplomatic appropriation bill, a point of order was made against an amendment which the Chair ruled out. On motion of Mr. Churchill C. Cambreleng, of New York, the Committee rose, and the Chair reported the point of order to the House.

¹ Second session Fifty-fifth Congress, Record, p. 6083.

² Sereno E. Payne, of New York, Chairman.

³ First session Fifty-ninth Congress, Record, p. 6840.

⁴ Joseph G. Cannon, of Illinois, Speaker.

⁵ General appropriation bills only are meant, since it is only as to such that the rule relating to legislation applies. (See sec. 3578 of Vol. IV.)

⁶ See sees. 1348–1351 of Vol. II for cases wherein the Speaker has intervened to preserve order in Committee of the Whole.

⁷ Second session Twenty-fifth Congress, Globe, p. 224 et seq.

The Speaker¹ ruled that the question did not come within his jurisdiction, whereupon the House again went into Committee of the Whole, and the amendment was decided to be out of order and fell.²

6928. On February 12, 1895,³ on motion of Mr. Alexander M. Dockery, of Missouri, the House resolved itself into Committee of the Whole House on the state of the Union for the consideration of general appropriation bills, and after some time spent therein the Speaker resumed the chair, and the Chairman reported that the committee, having had under consideration the bill (H. R. 8767) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1896, and for other purposes, had directed him to report the same with amendments and with the recommendation that as so amended it do pass.

Mr. David A. De Armond, of Missouri, made the point of order against the amendment reported from the committee providing annual clerks to Members that it changed existing law, did not reduce, but increased expenditures, and that the amendment was inhibited by Rule XXI, clause 2, and should not now be considered by the House, although reported from the Committee of the Whole.

The Speaker⁴ overruled the point of order, holding that the amendment having been considered in Committee of the Whole and no question of order having been reported to the House from the committee, the question could not now be raised in the House, saying:

The Chair thinks that under the practice and under the rulings heretofore the House could not possibly review a point of order made in the Committee of the Whole. The point is made and decided by the Chairman of the committee. There is an appeal allowed from the decision of the Chair, and then it rests with the Committee of the Whole whether the decision shall stand as the judgment of the committee or not. Under the practice suggested by the gentleman from Missouri a point of order might be raised in Committee of the Whole and determined by the Chairman, an appeal taken from the decision of the Chair, and the decision affirmed or reversed, as the case may be, in the committee; the same point of order could be brought into the House, debated, and decided by the Chair, with the right of appeal, and a judgment be rendered by the House finally upon it. The Chair does not think it would be consistent with the orderly practice of the House or consistent with the usage heretofore, and therefore overrules the point of order.

6929. In Committee of the Whole, points of order against the germaneness of a section of a bill are made when the bill is read by sections.

The principle of germaneness relates to a proposition by which it is proposed to modify some pending bill, and not to a portion of the bill itself.

On May 14, 1906,⁵ the bill (H. R. 14897) providing for the temporary maintenance of the Long Bridge over the Potomac River, and for other purposes, was under consideration in Committee of the Whole House on the state of the Union, when the bill was read at length.

¹James K. Polk, of Tennessee, Speaker.

²It is the almost invariable practice for the Committee of the Whole to settle its own questions of order.

³Third session Fifty-third Congress, Journal, p. 125.

⁴Charles F. Crisp, of Georgia, Speaker.

⁵First session Fifty-ninth Congress, Record, pp. 6854, 6855.

Before general debate or the reading of the bill for amendment had begun Mr. Sydney E. Mudd, of Maryland, proposed to raise a point of order against the, third section of the bill.

The Chairman¹ held that the point of order would have to be raised when the bill should be read by sections.

By unanimous consent Mr. Mudd was permitted to raise the point of order at once. He thereupon stated that section 3 related to the width of tires of vehicles, as follows:

That from and after the first day of January, nineteen hundred and seven, every wagon or other vehicle of whatsoever kind or description weighing, when loaded, more than four thousand five hundred pounds, used, operated, or propelled on, over, or across any of the streets, avenues, alleys, bridges, or roadways of the District of Columbia, shall have wheel tires not less than four inches broad.

and he urged that this was not germane to a bill having the title of this bill.

After debate the Chairman¹ held:

The Chair is of the opinion, first, that this bill went to the Committee on the District of Columbia substantially as it now stands, and is reported from the District Committee in that manner, and the committee has no direct control over the bill in respect to its form on a question of order. The Chair is further of the opinion that the principle of germaneness relates to a proposition by which it is proposed to modify some pending original proposition, and the Chair is of the opinion, whether it is cognate to the principal subject-matter of the bill or otherwise, that this section is a part of the original proposition, in effect is the original proposition, now pending before the committee, and therefore the point of germaneness does not lie to the section. And the Chair is advised that this opinion is in accordance with the universal construction of rules of the House, and therefore does not sustain the point of order.

6930. The reading of a bill by paragraphs being completed in Committee of the Whole, it was held to be too late to make a point of order in committee against the title.—On February 20, 1901,² the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the reading by paragraphs for amendment had been completed when Mr. William P. Hepburn, of Iowa, proposed to make a point of order against the words “for other purposes” in the title on the ground that they were in contravention of existing statute.

Mr. Joseph G. Cannon made the point of order that the question was raised too late, as the reading of the bill by paragraphs had been concluded.

Mr. Marlin E. Olmsted, of Pennsylvania, raised the question that the title under the rules could not be considered until the bill had been passed by the House.

After debate as to the proper time for considering the title the Chairman³ held that the point of order came too late in Committee of the Whole.

6931. A bill being considered under the five-minute rule, a point of order against a paragraph should be made before the next paragraph is read.—On January 24, 1905,⁴ the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the bill was being read by paragraphs for amendment under the five-minute rule.

¹ Charles E. Littlefield, of Maine, Chairman.

² Second session Fifty-sixth Congress, Record, p. 2708.

³ Albert J. Hopkins, of Illinois, Chairman.

⁴ Third session Fifty-eighth Congress, Record, p. 1301.

Mr. C. R. Davis, of Minnesota, raised a question of order as to a paragraph already read.

Mr. James T. McCleary, of Minnesota, made the point of order against the point of order that it came too late.

The Chairman¹ said:

The Chair wishes to be perfectly fair with the gentleman from Minnesota [Mr. Davis], but it seems to the Chair that the point of order comes too late. The paragraph just completed is beyond the paragraph to which the gentleman desires to make the point of order. * * * The Chair will say to the gentleman from Minnesota [Mr. Davis], while it may be true that the gentleman was misled, and naturally misled, in reference to the paragraph, still the bill shows very distinctly on its face where each paragraph commences and where it ends, and in this case the bill on its face shows quite distinctly the paragraph to which the gentleman wishes to make the point of order to be a paragraph distinct by itself which ended before the beginning of the paragraph last read. The usage of the House is that a paragraph is considered as a paragraph, and a point of order must be raised at the end of the reading of the paragraph. The Chair, therefore, is compelled to rule that the point of order comes too late.

6932. The Speaker declines to entertain points of order as to conditions alleged to have existed in Committee of the Whole, when the report has made no mention thereof.—On January 26, 1889,² the Committee of the Whole House on the state of the Union rose, and, the Speaker having resumed the chair, the Chairman reported that the Committee of the Whole, having had under consideration the bill (H.R. 10419) making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, had directed him to report the same back with an amendment in the form of a substitute.

Mr. William P. Hepburn, of Iowa, rising to a point of order, said:

I desire to say that the provisions of the bill making separate and distinct appropriations have not been considered in the Committee of the Whole, and no vote has been taken upon any provision appropriating a specific sum of money. Before the Committee of the Whole had proceeded beyond the consideration of the eighth line, before any subsequent paragraph had been read, this amendment was offered, and against objection a vote upon it was forced prior to the taking of any vote upon any one of the subsequent provisions of the bill. I make the point of order that the vote can not be taken upon the adoption of this substitute until the provisions of the bill have been separately read and considered in the Committee of the Whole.

The Speaker³ held:

Of course the House now has nothing before it, and the Chair has nothing before him except the report of the Committee of the Whole House on the state of the Union. The facts stated by the gentleman from Iowa [Mr. Hepburn], if they be facts, might constitute a good reason for the recommitment of the bill by the House to the Committee of the Whole. But the Chair must deal with the report as presented. The bill is out of the Committee of the Whole and in the House by the action of the Committee, which the Chair can not revise or overrule in any manner. The point of order is not sustained.

6933. On March 14, 1902,⁴ after the Committee of the Whole House on the state of the Union had risen and the Chairman reported favorably several bills, and

¹James R. Mann, of Illinois, Chairman.

²Second session Forty-ninth Congress, Record, p. 1059.

³John G. Carlisle, of Kentucky, Speaker.

⁴First session Fifty-seventh Congress, Record, p. 2813.

before action on the bills had been taken by the House, Mr. Francis W. Cushman, of Washington, rising to a parliamentary inquiry, said:

I will ask if it is in order to challenge the correctness of the statement made by the Chairman of the Committee of the Whole House to the Speaker? I raise the point that no vote was taken in the Committee of the Whole ordering the Committee to rise and report those bills to the House.

The Speaker¹ said:

The gentleman from Washington will readily see that the Chair can not hold a court of inquiry as to the action of the Committee of the Whole House on the state of the Union. That is a matter that the House only knows from the report of its Chairman. The Clerk will report the first bill.

6934. On December 10, 1877² the House having been in Committee of the Whole House on the state of the Union, and having considered the President's message, rose and reported that they had come to no resolution thereon.

Mr. Fernando Wood, of New York, moved that the Committee of the Whole House on the state of the Union be discharged from the further consideration of the President's annual message and the pending resolutions therein in relation to the distribution of the same.³

Mr. Joseph G. Cannon made the point of order that the motion was not in order, the Committee not having fully considered and disposed of the subject.

The Speaker⁴ ruled that the point of order could not be entertained by the Chair, not having been reported by the Chairman of the Committee of the Whole.

6935. On May 23, 1860,⁵ the Committee of the Whole House on the state of the Union rose and reported to the House the sundry civil appropriation bill with certain amendments.

The Speaker having stated the question on agreeing to the amendments, Mr. John Sherman, of Ohio, rose and, after submitting an additional amendment, moved the previous question.

Mr. Thomas B. Florence, of Pennsylvania, made the point of order that, by reason of the haste and precipitancy of the Chairman of the Committee of the Whole, he was denied his rights as a Member, and that the said bill was improperly reported. He asserted that the vote by tellers, according to which the Committee rose, was not reported by numbers, and that had it been a lack of a quorum would have been ascertained.

The Speaker pro tempore⁶ said:

The Chair overrules the point of order on the ground, in the first place, that it was not made in time; and in the second place, that it should have been made in Committee of the Whole.

¹ David B. Henderson, of Iowa, Speaker.

² Second session Forty-fifth Congress, Journal, p. 81; Record, p. 108.

³ At that time Rule CIV provided: "The House may at any time, by vote of the majority of the Members present, suspend the rules and orders for the purpose of going into Committee of the Whole on the state of the Union, and also for providing for the discharge of the Committee of the Whole House and the Committee of the Whole House on the state of the Union from the further consideration of any bill referred to it, after acting without debate on all amendments pending and that may be offered." This rule no longer exists, and was nearly obsolete at that time, in fact.

⁴ Samuel J. Randall, of Pennsylvania, Speaker.

⁵ First session Thirty-sixth Congress, Journal, p. 915; Globe, p. 2302.

⁶ Schuyler Colfax, of Indiana, Speaker pro tempore.

Mr. Florence having appealed, the appeal was laid on the table.

6936. On January 17, 1867,¹ the House proceeded to the consideration of the legislative appropriation bill, which had been reported from the Committee of the Whole House on the state of the Union with sundry amendments.

Among the amendments reported by the Chairman was one which Mr. Thaddeus Stevens, of Pennsylvania, declared had not been adopted by the Committee of the Whole.

The Speaker² said:

The Chairman of the Committee decided that the amendment was agreed to, and it is not within the province of the Speaker to rule in regard to what occurred in Committee of the Whole. All that takes place in Committee of the Whole is subject to revision in the House, and that is the reason why no journal is kept in Committee of the Whole. * * * It is not within the power of the Speaker to rule upon the subject. The gentleman can move to recommit the bill with amendments to the Committee of the Whole.

The motion to recommit was accordingly made, and agreed to by the House.

6937. On December 23, 1851,³ the Committee of the Whole reported the joint resolution relating to the act "granting bounty lands," etc., with the recommendation that it be referred to the Committee on the Judiciary.

Mr. Amos Tuck, of New Hampshire, made the point of order that it was not in order for the committee to rise and report the said resolution until it had been read by sections, and the amendments thereto, if any, had been considered in Committee of the Whole; consequently that the resolution should go back to the committee, to be considered in the manner prescribed by the rules.

The Speaker⁴ overruled the point of order.

Mr. Tuck having appealed, the appeal was laid on the table.

6938. The decision of a question of order by the Chair is subject to appeal by any Member.

In debate on an appeal no Member may speak more than once, unless by permission of the House.

Section 4 of Rule I⁵ provides that the Speaker shall decide questions of order:

* * * subject to an appeal by any Member, on which appeal no Member shall speak more than once, unless by permission of the House.

6939. An appeal is not in order when another appeal is pending.—On July 6, 1841,⁶ the House was considering a report from the Committee on Rules, when Mr. Charles G. Atherton, of New Hampshire, rose and objected to the consideration because the rule (Rule 127)⁷ required one day's notice to be given before changing or rescinding any standing rule of the House.

The Speaker overruled the point of order.

¹ Second session Thirty-ninth Congress, Globe, p. 528.

² Schuyler Colfax, of Indiana, Speaker.

³ First session Thirty-second Congress, Journal, p. 131.

⁴ Linn Boyd, of Kentucky, Speaker.

⁵ For full form and history of this rule see section 1313 of Volume II of this work.

⁶ First session Twenty-seventh Congress, Globe, p. 154; Journal, p. 206.

⁷ Now section I of Rule XXVIII. See section 6790 of this volume. The rule has been changed since the time of this ruling.

There was an appeal from this decision, and Mr. Atherton was proceeding to state his views, when the Speaker said that the appeal was not debatable.

Mr. Atherton said that he would appeal from that decision also.

The Speaker¹ held that it was not in order "to pile one appeal upon another."

The House then affirmed the decision of the Speaker on Mr. Atherton's appeal on the question of considering the report.

6940. On January 29, 1847,² when the House assembled, there were pending several questions which arose during a parliamentary conflict of the preceding day. A difference had arisen as to the meaning of a resolution which had been adopted to close debate on the naval appropriation bill in the Committee of the Whole House on the state of the Union. During this complication the Chair decided that a motion for a call of the House was not in order (a quorum being present) pending a motion to reconsider.

From this decision Mr. Robert Toombs, of Georgia, appealed; and there was a motion that Mr. George Ashmun, of Massachusetts, be excused from voting on this appeal.

When the House assembled on January 29 the Speaker announced the state of the several pending questions, whereupon Mr. George C. Dromgoole, of Virginia, moved that the House resolve itself into Committee of the Whole House on the state of the Union.

The Speaker³ announced that he had already decided that motion not in order.

From this decision Mr. Dromgoole appealed.

The Speaker ruled that this appeal could not be entertained. There was already one appeal pending, and by the rule one appeal could not be piled upon another.

6941. On September 20, 1893,⁴ Mr. Julius C. Burrows, of Michigan, had appealed from a decision of the Chair in relation to a report from the Committee on Rules.

Mr. Ashbel P. Fitch, of New York, moved to lay the appeal on the table, pending which, Mr. Burrows moved that the House take a recess for one hour.

The Speaker⁵ having ruled the motion of Mr. Burrows out of order, Mr. Sereno E. Payne, of New York, appealed from the decision of the Chair.

The Speaker declined to entertain the appeal on the ground that the appeal of Mr. Burrows from the former decision of the Chair was already pending, and that two appeals could not be pending at the same time.

6942. Under certain circumstances Speakers have admitted one appeal while another was pending.—On May 30, 1836,⁶ during a call of the yeas and nays on a motion to suspend the rules, Mr. John M. Patton, of Virginia, asked to be excused from voting⁷ and demanded that the question of his request be taken before the announcement of the vote on the motion to suspend the rules.

¹ John White, of Kentucky, Speaker.

² Second session Twenty-ninth Congress, Globe, p. 290.

³ John W. Davis, of Indiana, Speaker.

⁴ First session Fifty-third Congress, Journal, pp. 96, 97, 98.

⁵ Charles F. Crisp, of Georgia, Speaker.

⁶ First session Twenty-fourth Congress, Journal, pp. 899–903.

⁷ Such a request is no longer in order, except by unanimous consent.

The Speaker having decided, in conformity with previous decisions, that this was an incidental question to be considered by the House after the original question had been determined, Mr. Patton appealed.

Mr. Amos Lane, of Indiana, having moved to lay this appeal on the table, the question was taken by yeas and nays. During the calling of the roll Mr. Daniel Jenifer, of Maryland, rose and asked to be excused from voting, and at the end of the roll call demanded, as Mr. Patton had done, that the question on his request be taken before the announcement of the result on the vote.

The Speaker having decided as in the case of the request of Mr. Patton, Mr. Henry A. Wise, of Virginia, appealed.

Thereupon, Mr. Thomas L. Hamer, of Ohio, made the following point of order:

Can two questions of order be pending at the same time? One has been made, decided by the Chair, the decision appealed from, a motion to lay the appeal on the table, and that motion is as yet undecided. The first question, therefore, is still pending, and no other can be raised until it is disposed of.

The Speaker¹ decided that the appeal taken by Mr. Wise should be entertained.

Thereupon the question was put and decided on Mr. Wise's appeal; and then the Speaker announced the result of the vote laying on the table the appeal of Mr. Patton. Then finally the Speaker announced the result on the motion to suspend the rules.

6943. On May 15, 1854,² the Speaker³ ruled out of order a motion made by Mr. Israel Washburn, jr., of Maine, to lay on the table the resolution providing for closing debate in Committee of the Whole House on the state of the Union on the bill (H. R. 236) to organize the Territories of Kansas and Nebraska.

The Speaker having decided this motion to be out of order, Mr. Washburn appealed, and on the question on this appeal Mr. Edwin B. Morgan, of New York, moved to be excused from voting.⁴

Mr. Thomas L. Clingman, of North Carolina, made the point of order that this motion to excuse was not in order, and the Speaker overruled the point of order.

Mr. Clingman thereupon appealed, and a motion to lay the appeal on the table being decided in the negative, the question on sustaining the decision of the Chair was decided in the negative, and the Chair was overruled.

Then the question recurred on Mr. Washburn's appeal, and the question being put the decision of the Chair was sustained.⁵

6944. The Speaker having decided that words spoken in debate on a pending appeal were out of order declined to entertain an appeal from the latter decision.—On July 11, 1832,⁶ during consideration of an appeal from a decision of the Chair, Mr. William Stanberry, of Ohio, was called to order for word spoken in debate, and the words were taken down.

¹James K. Polk, of Tennessee, Speaker.

²First session Thirty-third Congress, Journal, pp. 854–861; Globe, pp. 1192, 1193.

³Linn Boyd, of Kentucky, Speaker.

⁴Such a motion is no longer in order except by unanimous consent.

⁵Again, on May 22, we find Mr. Speaker Boyd entertaining an appeal on a question of order over an incidental motion, while another appeal was pending. (Journal, pp. 886, 888.) The Speaker justified the entertaining of the second appeal on the ground of the peculiar circumstances of the case and the fact that the question on excusing a Member from voting concerned his privileges. (Globe, p. 1245.)

⁶First session Twenty-second Congress, Debates, p. 3899.

The words being read, the Speaker decided that they were not in order.

Mr. Stanberry appealed from this decision.

The Speaker¹ declared that the appeal was not in order, since in this way appeals might be multiplied ad infinitum.

6945. An appeal pending at an adjournment on Friday, but related to public and not private business, does not go over to the next Friday, but comes up on the next legislative day.—On June 21, 1890,² the Speaker stated the pending question to be the motion of Mr. William McKinley, jr., of Ohio, to lay on the table the appeal of Mr. Richard P. Bland, of Missouri, from the decision of the Chair pending when the House adjourned on the previous day, on which motion the yeas and nays were ordered.

Mr. Bland, of Missouri, moved to reconsider the vote by which the yeas and nays were ordered.

Pending this, Mr. Joseph G. Cannon, of Illinois, made the point of order that the appeal of Mr. Bland having been made on Friday—private bill day—must go over until next Friday as unfinished business of that day.³

The Speaker⁴ overruled the point of order on the ground that the question at issue was one of privilege, and as such was in order on any day, subject only to the question of consideration.

Mr. James H. Blount, of Georgia, made the point of order that the question was not in order at the present time, for the reason that being unfinished business it could only be taken up after business on the Speaker's table had been disposed of.

The Speaker overruled the point of order on the ground that the question pending, in addition to being privileged, related to the disposal of business on the Speaker's table, and that the order for the yeas and nays brought the subject immediately before the House.

6946. The Chair having used his discretion in recognizing a Member for debate on a point of order, declined to entertain an appeal from this recognition.—On April 20, 1900,⁵ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. W. D. Vandiver, of Missouri, offered an amendment for the establishment of a Government armor-plate factory.

Mr. Alston G. Dayton, of West Virginia, having made the point of order against the amendment, Mr. Oscar W. Underwood, of Alabama, asked recognition to speak on the point of order.

The Chairman said that he would hear the gentleman from Alabama for ten minutes.

Mr. Underwood protested that he might not be thus limited.

The Chairman said:

The Chair declines to recognize the gentleman otherwise than as he has already recognized him.

Mr. Underwood said:

I wish to appeal from the authority of the Chair to limit debate on this.

¹ Andrew Stevenson, of Virginia, Speaker.

² First session Fifty-first Congress, Journal, pp. 770–772; Record, p. 6353.

³ For rule relating to Friday, see section 3266 of Volume IV of this work.

⁴ Thomas B. Reed, of Maine, Speaker.

⁵ First session Fifty-sixth Congress, Record, p. 4494.

The Chairman¹ declined to entertain an appeal on a matter of recognition.

6947. Debate on an appeal in Committee of the Whole has been limited by the Committee itself, on motion put and carried, or by the Committee rising to enable the House to limit it.—On May 25, 1892,² the House was in Committee of the Whole House on the state of the Union, considering the sundry civil appropriation bill.

Mr. Christopher A. Bergen, of New Jersey, having appealed from a decision of the Chair, and debate having proceeded on the appeal at considerable length, Mr. William S. Holman, of Indiana, moved that the Committee rise, his purpose being to limit debate on the appeal.

Mr. Benjamin A. Enloe, of Tennessee, made the point of order that it was not competent for the Committee of the Whole to rise to limit debate upon a point of order; that it was within the discretion of the Chair to close the debate at any time.

The Chairman³ ruled that it was competent for the Committee of the Whole to rise when they might please, and for any purpose they might please.

The Committee having voted to rise, the House, on motion of Mr. Holman, limited the time of debate on the appeal, and then again voted to go into Committee of the Whole.

6948. On January 18, 1898,⁴ the House being in Committee of the Whole House on the state of the Union, considering the diplomatic and consular appropriation bill, and the first paragraph of the bill having been read for debate and amendment under the five-minute rule, Mr. D. A. De Armond, of Missouri, offered an amendment recognizing the belligerency of the Cuban insurgents.

Mr. Robert R. Hitt, of Illinois, made a point of order against the amendment, which the Chairman sustained.

Mr. De Armond thereupon appealed.

After the debate had proceeded for some time, Mr. Hitt moved to close debate upon the pending question, which was the appeal.

Mr. Joseph W. Bailey, of Texas, made the point of order that it was not in order to move to close debate in the Committee on that question.

The Chairman⁵ ruled that the point of order came too late, as the Committee were dividing.

On a vote by tellers, debate on the appeal was closed, 153 ayes to 118 noes.

6949. On March 25, 1898,⁶ the House was in Committee of the Whole House on the state of the Union, considering the naval appropriation bill, under the five-minute rule.

A point of order that Mr. Charles T. Hartman, of Montana, was not confining himself to the subject which was then under debate having been sustained by the Chair, Mr. Joseph W. Bailey, of Texas, appealed.

After a time, Mr. Charles A. Boutelle, of Maine, moved to close debate on the appeal.

¹ Sereno E. Payne, of New York, Chairman.

² First session Fifty-second Congress, Record, p. 4680.

³ Rufus E. Lester, of Georgia, Chairman.

⁴ Second session Fifty-fifth Congress, Record, pp. 730, 731.

⁵ William P. Hepburn, of Iowa, Chairman.

⁶ Second session Fifty-fifth Congress, Record, pp. 3226–3232.

Mr. Bailey made the point of order that it was not permissible to move to close debate upon the appeal. After debate the Chairman¹ decided:

The Chair would like to make a ruling. He has heard all the discussion he cares to upon this point of order. It always has been held that the Chair can conclude discussion of a point of order when he desires, when his mind is satisfied upon the point, for that is the real purpose of permitting the discus-

sion; but it does not necessarily follow that the Chair can bring to an end debate upon an appeal from the decision already made. Discussion in that case is not to satisfy the mind of the Chair, but of the members of the Committee. But without passing upon whether or not the Chair can bring that debate to a conclusion, the Chair does hold that it is within the power of the Committee to bring the debate to a conclusion, and therefore will put the motion that debate be now closed.

6950. On March 24, 1904,² while the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. John S. Williams, of Mississippi, took an appeal from the decision of the Chair, and debate proceeded on the appeal.

A question arising as to the time of debate, which had proceeded under the hour rule and not under the five-minute rule, the Chairman³ said:

A motion to close debate will be in order at any time.

Later Mr. Williams moved to close debate on the appeal, and the question being taken, the motion was agreed to.

6951. In Committee of the Whole, as well as in the House, a Member may speak but once on an appeal.—On January 18, 1898,⁴ the House was in Committee of the Whole House on the state of the Union, considering the diplomatic and consular appropriation bill.

Mr. D. A. De Armond, of Missouri, having offered an amendment for recognizing the belligerency of the Cuban insurgents, which the Chair had ruled out of order, and from which ruling Mr. De Armond had appealed, Mr. James Hamilton Lewis, of Washington, arose and addressed the Chair.

Mr. James S. Sherman, of New York, made the point of order that the gentleman from Washington had already addressed the House once on the appeal.

The Chairman⁵ sustained the point of order, after having had read section 4 of Rule I.⁶

6952. It was formerly held that appeals on questions relating to priority of business were not debatable.—On January 8, 1850,⁷ Mr. Richard K. Meade, of Virginia, proposed the following resolution:

Resolved, That the eleventh rule of the House be, and the same is hereby, repealed.

The Speaker having decided that the resolution offered by Mr. Meade was out of order at that time, Mr. Meade appealed, and was proceeding to debate the appeal.

The Speaker⁸ declined to hear Mr. Meade, stating that appeals on questions of order arising upon matters concerning priority of business were not debatable.

¹ James S. Sherman, of New York, Chairman.

² Second session Fifty-eighth Congress, Record, pp. 3637, 3638.

³ H. S. Boutell, of Illinois, Chairman.

⁴ Second session Fifty-fifth Congress, Record, p. 739.

⁵ William P. Hepburn, of Iowa, Chairman.

⁶ See section 1313 of Volume II of this work.

⁷ First session Thirty-first Congress, Globe, p. 118.

⁸ Howell Cobb, of Georgia, Speaker.

6953. The House has overruled a decision of a Speaker admitting an appeal.—On December 13, 1808,¹ the division of a question had been demanded and made, and the question had been put and the vote taken on the first portion. The Chair then stated the question on the second member of the resolution.

A point of order having been made and decided as to the second member, Mr. John Randolph, of Virginia, appealed.

Mr. Thomas Gholson, jr., of Virginia, objected to the appeal after the question had been taken.

The question was then taken—

Is the decision of the Chair upon the appeal of Mr. Randolph correct?

and the House decided in the negative. So the Speaker² was overruled, and did not put the question on Mr. Randolph's appeal.³

6954. A special order prohibiting "debate on intervening motion," it was held that an appeal should be entertained.—On November 19, 1903,⁴ the Committee of the Whole House on the state of the Union rose in accordance with the terms of the following order:

Resolved, That immediately on the adoption of this rule, and immediately after the reading of the Journal on each day thereafter until the bill hereinafter mentioned shall have been disposed of, the House shall resolve itself into Committee of the Whole House on the state of the Union for consideration of the bill H. R. 1921, a bill to carry into effect a convention between the United States and the Republic of Cuba, signed on the 11th day of December, 1902; that not later than 4 o'clock on November 19 general debate shall be closed in Committee of the Whole, and whenever general debate is closed the Committee shall rise and report the bill to the House; and immediately the House shall vote without debate or intervening motion on the engrossment and third reading and on the passage of the bill.

The bill having been passed to be engrossed and read a third time, Mr. John Sharp Williams, of Mississippi, moved to recommit the bill with instructions.

Mr. Sereno E. Payne, of New York, made the point of order that the motion to recommit was not in order.

Thereupon Mr. Williams appealed.

Mr. Payne made the point of order that the appeal was dilatory.

The Speaker⁵ held:

If, under the rules, the previous question has been moved upon the question arising, there are many precedents where points of order would be entertained, and, of course, if entertained, be subject to appeal, unless they be dilatory, when they would come under another rule. Now, the House, after debate, has adopted this special order upon a yea-and-nay vote with a full House, and we are proceeding under the special order, which cuts off a motion to recommit, which motion would otherwise be in order. When the gentleman seeks to make the motion to recommit, the Chair necessarily, under the order of the House, sustains the point of order to that motion. The gentleman appeals from the ruling of the Chair. The Chair thinks the better practice is not to invoke the rule touching dilatory motions except in cases where the purpose to delay is plainly evident, and the Chair would prefer to err, if it errs at all,

¹Second session Tenth Congress, Journal, p. 387 (Gales & Seaton ed.); Annals, p. 854.

²Joseph B. Varnum, of Massachusetts, Speaker.

³On December 13, 1808, objection being made to the admissibility of an appeal from a decision of the Speaker, the Speaker (Varnum) decided the appeal admissible (2d sess., 10th Cong., Journal, pp. 113–117).

⁴First session Fifty-eighth Congress, Record, p. 388; Journal, p. 81.

⁵Joseph G. Cannon, of Illinois, Speaker.

upon giving the House the right to express its will; and although the House may have expressed its will otherwise heretofore, the Chair is proceeding under the order of the House in making the ruling, from which ruling the gentleman from Mississippi appeals. The Chair therefore entertains the appeal.

6955. An appeal may not be taken from a response of the Speaker to a parliamentary inquiry.—On March 30, 1898,¹ Mr. Joseph W. Bailey, of Texas, had presented as a question of privilege the following resolution:

Resolved, etc., That the heroic struggle of the Cuban people against the force of arms and the horrors of famine has shown them to be free; and

Second. The United States hereby recognizes the Republic of Cuba as a free and independent state.

The Speaker having sustained the point of order that this resolution did not involve a question of privilege, Mr. Bailey, as a parliamentary inquiry, asked if the Speaker held that the resolution must be introduced through the box² before it could go to the Committee on Foreign Affairs.

The Speaker³ replied in the affirmative.

Thereupon Mr. Bailey proposed to appeal.

The Speaker said:

The Chair will explain the situation to the gentleman. The gentleman from Texas presented a resolution, which the House has pronounced out of order. That proceeding is ended because it has been submitted to the court of last resort and decided. That matter is ended.

Now, the gentleman from Maine [Mr. Boutelle] had been recognized, pending this proposition, for a privileged motion. While the Chair was putting the question the gentleman from Texas claimed the attention of the Chair and stated that he desired to make a parliamentary inquiry, the inquiry being what had become of the resolution—whether it went to the Committee on Foreign Affairs. And the Chair stated to the gentleman that it certainly did not. Thereupon the Chair proceeded to put the question on the motion presented by the gentleman from Maine; and the gentleman from Texas then appealed. He must have appealed from the result of a parliamentary inquiry, and that can not be tolerated.

6956. When the vote on an appeal has resulted in a tie, the Chair has sometimes given a casting vote in favor of his own decision.⁴—On May 31, 1790⁵

On motion made and seconded, that the House do now proceed to take into consideration a motion which lay on the table, in the words following, to wit: "*Resolved*, That Congress shall meet and hold their next session at ——," it was resolved in the affirmative, by yeas and nays—yeas 32, nays 27.

The House having proceeded to the consideration of the resolution, it was moved to amend by inserting after the word "*Resolved*," the words—

that a permanent seat for the Government of the United States ought to be fixed at some convenient place on the river Delaware, and.

The motion being objected to as out of order, the Speaker⁶ declared the motion not in order.

¹ Second session Fifty-fifth Congress, Record, pp. 3379–3383.

² The box at the Clerk's table for the introduction of bills.

³ Thomas B. Reed, of Maine, Speaker.

⁴ See also sections 5239, 5686 of this volume.

⁵ Second session First Congress, Journal, pp. 122, 124.

⁶ Frederick Muhlenberg, of Pennsylvania, Speaker.

An appeal being taken by two Members, and the question being put, "Is the said motion in order?"¹ there appeared, yeas 29, nays 29.

Whereupon Mr. Speaker declared himself with those who voted in the negative, and the motion was decided not to be in order.²

6957. When, on an appeal from the decision of the Chair, the vote would be a tie after the Chair should have voted to sustain his own decision, an interesting question would be presented.—On May 12, 1852,³ during the consideration of the bill (H. R. 7) known as the homestead bill, an appeal was taken from a decision of the Chairman, and the question was put:

Shall the decision of the Chair stand as the judgment of the Committee?

The tellers reported ayes 63, noes 64.

Mr. George W. Jones, of Tennessee, made the point that if the Chair would add his vote to the affirmative, the vote would stand 64 to 64, and the decision would not be overturned.

The Chairman⁴ said:

"The Chair is of the opinion that if his own vote were added it would not change the result. * * * The burden of getting a majority is with the affirmative,⁵ in the opinion of the Chair. The vote is, ayes 63, noes 64, and the decision of the Chair is overruled."

¹The present form of stating an appeal is: "Shall the decision of the Chair stand as the judgment of the House [or the Committee]."

²Again, on June 6, 1832 (first session Twenty-second Congress, Debates, pp. 3294, 3295), in Committee of the Whole, Chairman Jesse Speight, of North Carolina, on a tie vote on an appeal, voted in the affirmative to sustain his own ruling. Also see *Globe*, first session Thirty-first Congress, p. 1608; *Record*, second session Fifty-fifth Congress, p. 2500. A tie vote on an appeal sustains the Chair (see sec. 185 of Reed's Parliamentary Rules).

³First session Thirty-second Congress, *Globe*, p. 1348.

⁴Harry Hibbard, of New Hampshire, Chairman.

⁵Mr. Speaker Reed, in his Parliamentary Rules, states that on a tie vote on an appeal the decision is sustained. (Reed's Parliamentary Rules, sec. 185.) This should be so when the Chair, being a Member, has not been counted in the vote, for it does not seem reasonable that his decision should be overturned except by a majority; and it is to be assumed that his voice would be in favor of his own decision. Where, after he has voted, there is still a tie, it is evident from the form in which the question is put that the body does not answer it by the required majority, it being an accepted principle that on a tie vote the motion fails. But while this is the aspect of the case from a technical point of view, it seems on the broader view that a decision of the Chair ought not to be reversed unless there be a majority against it. In this connection, however, it is to be noted that a rule of the House declares that on a tie vote the question is lost. (Section 5964 of this volume.) The present form of stating an appeal is: "Shall the decision of the Chair stand as the judgment of the House?" Of course, strictly speaking a tie vote, when the Chair does not vote, would not sustain the decision; but Mr. Speaker Reed thought otherwise. On all considerations it would seem better that the question on an appeal should be put thus: "Shall the decision of the Chair be overruled?" This would leave no doubt that a tie vote would sustain the Chair; and is a form that states accurately the purpose of the Member taking the appeal. (See also section 4569 of Vol. IV of this work.)